INTERSTATE COMMERCE COMMISSION REPORTS

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INTERSTATE COMMERCE COMMISSION

OF THE UNITED STATES

MARCH, 1917, TO MAY, 1917

REPORTED BY THE COMMISSION

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INTERSTATE COMMERCE COMMISSION.

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BALTHASAR H. MEYER.
WINTHROP M. DANIELS.

George B. McGinty, *Secretary*.

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[NOTE.—"Et al." in parentheses indicates other complainants or defendants, as in subnumbers or other cases, reported in same opinion.]

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INTERSTATE COMMERCE COMMISSION REPORTS.

No. 6833.

IN RE PERE MARQUETTE RAILROAD COMPANY AND CINCINNATI, HAMILTON & DAYTON RAILWAY COMPANY.

March 13, 1917.

Report herein contains findings and conclusions of the Commission relative to a proceeding of inquiry and investigation entered into concerning the character of the service, physical condition of the equipment and property, financial history, transactions, and practices of the Pere Marquette and the Cincinnati, Hamilton & Dayton railroad companies.

Seward L. Merriam, *Henry M. Campbell*, and *Thomas S. Parker* for Pere Marquette Railroad Company and its receivers.

Morison R. Waite for Cincinnati, Hamilton & Dayton Railway Company and its receivers.

C. A. Severance for J. P. Morgan & Company.

W. M. Ivins, jr., for Paul Coster.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Pursuant to request of the Committee on Interstate and Foreign Commerce of the House of Representatives this Commission, on April 24, 1914, entered into a proceeding of inquiry and investigation, upon its own motion into and concerning "the character of the service, physical condition of the equipment and property, financial history, transactions, and practices of the Pere Marquette Railroad Company." Shortly thereafter it developed in the hearings in *The Five Per Cent Case*, 31 I. C. C., 351; 32 I. C. C., 325, that many of the transactions of that company since July 1, 1904, were closely interwoven with those of the Cincinnati, Hamilton & Dayton Railway Company, and a like order of investigation in respect of the latter company was entered on July 15, 1914, in the same proceeding. The combined investigation has been conducted throughout, as requested by the House committee, in connection with the valuation of the property of these carriers, under section 19a of the act to regulate commerce.

The two respondent carriers will be referred to in this report as the Pere Marquette and the C., H. & D. The same designations are used in referring to the two predecessor companies.

SYNOPSIS.

It may be well at the outset to marshal the outstanding facts, among the many disclosed of record, which have affected the ability of these two carriers to do their duty as common carriers and also the value of their securities in the hands of the investing public.

The Pere Marquette came into being as a consolidation of three relatively unsuccessful Michigan roads and began operation on January 1, 1900. The consolidation was brought about by New England interests headed by W. W. Crapo and Nathaniel Thayer, and in the process outstanding capital stock in the hands of the public was inflated by $1,461,250 and book value of property by $4,290,230.41. The Crapo-Thayer control continued for three years. Its operating policies were sound in the main; rolling stock and miles operated were increased; a small surplus was accumulated and used for improvements; no common-stock dividends were paid, and physical condition was bettered. Outstanding long term debt was increased by almost $6,000,000 and at the end of the three years was about $31,000,000. In the next 12 years it was increased by more than $50,000,000 under the succeeding managements.

The first of these was the Prince management, which secured control on December 29, 1902, through purchase of Pere Marquette common at a maximum of $85 per share. Its policy of expansion included acquisition of new equipment costing over $6,000,000, and of about 383 miles of main and branch lines, most of which had a history of failure. In acquiring this mileage underlying bonds of over $4,000,000 were assumed and almost $3,500,000 bonds issued. The Prince interests reversed the policy of their predecessors, undermaintained road and equipment, paid unearned dividends on common stock, and, in the 18 months of their management, added $2,500,000 net to current liabilities, also added over $14,500,000 to outstanding long term debt, promoted a C., H. & D. syndicate, and through it sold 110,000 shares of Pere Marquette common to the C., H. & D. at $125 per share.

The next management was that of the C., H. & D. syndicate, which took control of both carriers on July 7, 1904, and parted with it in the following month to the Zimmerman-Hollins interests. During these few weeks new and heavy burdens were bound upon the Pere Marquette.

The Zimmerman-Hollins management succeeded to the control in August, 1904, and continued the work begun by the Prince interests, with the result that when the control of both roads was sold to J. P. Morgan & Company on October 20, 1905, both were promptly put under the first receiverships which began in December, 1905.

Meantime another $10,000,000 of long term Pere Marquette securities had been marketed through interested parties at a cost to the road of over $1,100,000 in discounts, $1,645,000 was paid to

certain members of Hollins's pool for their worthless stock in the Toledo Railway & Terminal Company, $400,000 was advanced under syndicate schemes to affiliated companies and lost, and over $1,100,000 was used to pay off floating debts contracted by the Prince régime. The mileage and equipment were somewhat increased. Operation was unsuccessful and resulted in deficits.

Two years of receivership were succeeded in December, 1907, by a Morgan reorganization based on the consolidation of the Pere Marquette with its already controlled Pere Marquette of Indiana, 20 miles long. This furnished the pretext for further stock inflation, for an issue of $5,000,000 of 6 per cent debentures, and for the writing up as "cost of road and equipment" of the direct losses, aggregating almost $5,000,000, of the former administrations. Morgan control has continued since, except for the second receivership, which began on April 5, 1912. In the intervening years the Pere Marquette was in constant difficulty, revenues failed to provide for expenses and charges, and bond interest was paid only at the cost of adequate maintenance of the property. Road and equipment deteriorated markedly, financing became more and more difficult, and needed funds were secured only at the expense of heavy discounts. The second receivership was necessary to accomplish what the first had failed to accomplish, the physical and financial rehabilitation of the Pere Marquette.

The road is now emerging from the second receivership. During five years of court control it has greatly improved in physical condition, and its service has improved accordingly. Under the reorganization plan a large part of the fixed interest-bearing obligations outstanding on June 30, 1916, are to be exchanged for capital stock, of which there is to be $11,200,000 of 5 per cent prior preference, cumulative, $12,429,000 of 5 per cent preferred, cumulative, and $45,046,000 of common shares. The plan contemplates a decrease of over $8,000,000 in capitalization, exclusive of overdue interest on funded debt amounting to approximately $10,000,000, and a considerable decrease in fixed interest charges. The new capitalization will also represent $16,000,000 of new money provided for reorganization expenses, additions and betterments, working capital, and other purposes.

In contrast to the Pere Marquette the C., H. & D., prior to July 7, 1904, when the C., H. & D. syndicate took control, was a highly prosperous road, despite losses of several millions through Henry S. Ives and his associates in the late eighties, the drain of supporting less prosperous lines west of Hamilton, Ohio, a funding of deficits and interest on the western lines into some $1,800,000 of bonds, and the injection in 1895 of $10,200,000 of water into the capital stock through the consolidation effected by the Shoemaker-Woodford in-

terests, then in control. These interests sold out to the C., H. & D. syndicate in 1904, receiving $125 per share for their common stock, which was water, and $110 per share for 10,000 shares of preferred stock. The surplus of that date was replaced in the following year by a deficit of at least $1,086,127.49, allowance being made for some $843,000 concealed by falsification of accounts.

In organizing the syndicate Prince and his Pere Marquette associates had joined with promoters of the Toledo Railway & Terminal Company, a new and unsuccessful belt line at Toledo, which cost $2,610,000 and ultimately yielded those promoters a profit of $2,190,000. The story of this company is told in Appendix 12. Nearly 75 per cent of the underwriting in the C., H. & D. syndicate was secured by promoters' pledges as to what the C., H. & D. or the Pere Marquette, or both, would do. These included promised contracts to an express company and to manufacturers of equipment and appliances. And even after the underwriting was completed the syndicate managers were constrained to borrow over $3,000,000 to acquire control on July 7, 1904. On the same day corporate action was taken to fulfill the pledges made and carry out the plans previously settled, involving large increases in fixed interest-bearing debt. The road then operated about 624 miles of single track, with 184 locomotives and 9,579 cars. In round numbers, its capital stock was about $16,000,000 and its long term debt $12,700,000. Its current assets exceeded its current liabilities by nearly $1,000,000.

Holders of the 5 per cent preferred stock, which was noncumulative, were startled by the new debt and at once threatened proceedings in court for rescission. The matter was compromised by agreement that the company should retire such preferred stock at 110 of par. This necessitated fresh financing and the syndicate was obliged to surrender its month old control to H. B. Hollins & Company, who were to furnish the funds for retirement and be paid by the company a cash commission of $100,000 and a bonus of $12 per share and interest. The company was thus compelled by its management to pay over $122 per share for its preferred stock, including shares issued from the treasury after the retirement began, instead of retiring it at par. Incidentally the fixed interest charges were again greatly increased.

The Zimmerman-Hollins interests retained control from August, 1904, to October 20, 1905, when they sold the common stock to J. P. Morgan & Company for $160 per share. It had cost them with syndicate expense about $140, and, as previously stated, never represented a dollar of investment in the property of the company. During the 14 months of their management the figure of miles operated was swelled by completion of a 12-mile extension, some trackage rights at Toledo, and a change in accounting methods as to 381

miles of a subsidiary. The number of locomotives was increased by 49 and of cars by 2,739 partly by the same process and partly by purchases. The capital stock was decreased, by retirement of the preferred, to $8,302,404, but the long term debt was more than trebled, increasing the aggregate capitalization by twenty millions to $48,008,871.85. The principal debt increase may be summarized as follows:

$2,920,000 of 4½ per cent equipment trust obligations.

$15,000,000 of 4 per cent collateral trust notes, $9,388,000, issued to redeem 66,769½ shares of 5 per cent preferred stock and $5,612,000 to refund noninterest-bearing purchase money collateral trust notes which had been issued in part payment for 110,000 shares of Pere Marquette stock.

$8,250,000 of 4 per cent refunding mortgage bonds issued in part payment for 110,000 shares of Pere Marquette stock.

$225,000 branch-line bonds, previously outstanding but not recorded as a C., H. & D. liability.

During the Zimmerman-Hollins control noncumulative preferred stocks were retired by the issue of fixed interest-bearing securities of much greater par value, and a Hollins syndicate reaped large profits; noninterest-bearing notes redeemable in common stock were in fact redeemed prior to maturity with fixed interest-bearing obligations, and Hollins took the profits; millions of Pere Marquette bonds guaranteed by the C., H. & D. were floated, and Hollins syndicates took more profits; utterly worthless stock of the Toledo Railway & Terminal Company was sold by the holders, among whom were C., H. & D.-Pere Marquette directors, to the Pere Marquette, and again Hollins profited. Finally, in anticipation of the sale to Morgan of their holdings of C., H. & D., valuable properties and rights of the latter were transferred to their recently acquired Detroit, Toledo & Ironton Railway. The income account proved the utter inability of the system to carry its load of debt, even though the accounts were freely falsified.

Morgan's purchase was on behalf of the Erie Railroad Company. The incidents of that purchase, its speedy rescission by the Erie, and the assumption by Morgan of the obligation, are later set forth. Immediately after the control had been returned to Morgan a receivership was asked, and it began December 4, 1905.

The C., H. & D. continued in receivership until August, 1909. During the four years from July 1, 1905, to June 30, 1909, it failed to earn fixed charges by over $5,584,000. The receiver issued his 6 per cent certificates for $1,127,128, of which $103,468 was used to purchase equipment and $1,023,660 to pay interest on funded debt maturing January 1 and July 1, 1906. The current liabilities of the company also increased. About $1,000,000 of equipment trust obligations were paid off.

In the early summer of 1908 the comptroller of the Baltimore & Ohio after an examination at the direction of his executives made an extended report in which the hopeless condition of the C., H. & D. was clearly shown. In the face of this report the Baltimore & Ohio board on February 5, 1909, authorized a committee to investigate the situation in the light of a Morgan proposal looking to purchase of the C., H. & D. stock and a readjustment of that road's finances. Their report was favorable to purchase, and this, with an extensive readjustment of the finances of the C., H. & D., was arranged in the summer of 1909, the Baltimore & Ohio guaranteeing many millions of the new securities issued by the C., H. & D.

It is difficult to determine just what actuated the Baltimore & Ohio management in taking over the C., H. & D. Their original expectations had failed before the preliminary negotiations were completed. The Pere Marquette was not even inquired into, despite its recent release from receivership and the fact that the C., H. & D. was then carrying Pere Marquette common as an asset of $13,750,000.

Operations of the C., H. & D. during the five years of Baltimore & Ohio control to June 30, 1914, resulted in deficits aggregating over $7,450,000. Included in this is $1,100,991.56 of direct losses on account of flood damage in the spring of 1913. Failure to negotiate C., H. & D. first and refunding bonds necessitated loans by the Baltimore & Ohio, and by June 30, 1914, the latter had advanced $22,276,877.52 for construction, deficits, maturing equipment obligations, flood expenditures, and the payment at maturity on July 1, 1913, of $11,557,000 purchase money collateral trust gold notes, with six months' interest thereon.

Not until after the facts had been disclosed in the course of *The Five Per Cent Case*, *supra*, did the Baltimore & Ohio's annual reports to its stockholders contain anything which would inform even the careful student that its C., H. & D. advances to July 2, 1913, had amounted to $19,289,405. If that sum be reduced by the estimated value of the nonsystem securities pledged thereunder the net advances, of which the greater part represented loss, would be $15,900,000. This latter amount exceeds by more than $5,500,000 the net corporate income of the Baltimore & Ohio, after payment of dividends, for the four years to June 30, 1913. It is more than one-third of the amount paid in dividends during those four years. The rate of dividend on Baltimore & Ohio common in 1915 and 1916 was 5 per cent as against the 6 per cent previously paid.

The C., H. & D. again passed into receivers' hands on July 2, 1914. The deficit in the year ended June 30, 1915, was $3,093,185.58, allowing for a full accrual of interest as theretofore. In September, 1915, the Cincinnati, Indianapolis & Western, owning the lines west of Hamilton, was foreclosed and sold, and C., H. & D. operation

of the same ceased after November 30. For the year ended June 30, 1916, the deficit was $1,356,554.47.

A reorganization plan was declared operative on April 7, 1916. Under it a new company will take over about 368 miles, comprising the lines from Cincinnati to Toledo and from Dayton to Ironton Junction, with some smaller branches. The Baltimore & Ohio is redeeming the C., H. & D. general mortgage bonds at 70 plus, and is to issue a new 4 per cent bond for cash requirements and refunding. After deducting collateral of an estimated value of $3,368,000 from its actual and prospective outlay there will be left $35,892,323 as its approximate net ultimate investment in the C., H. & D., not allowing for $3,274,000 interest for three years to June 30, 1916. In the fiscal year ended on that date the Baltimore & Ohio wrote off against surplus $10,892,323, thus reducing its book investment in the C., H. & D. to $25,000,000.

SCOPE AND DATA.

We proceed to show within the limits of the record how the various schemes were conceived and carried through; who the responsible parties were and what their profits; why the earlier receiverships failed to rehabilitate the roads; and how radical reorganization ultimately became necessary.

It will assist an understanding of the affairs of these two railroads to bear in mind certain landmarks in their histories since the organization of the first Pere Marquette in 1899, and of the C., H. & D. in 1895. These may be tabulated chronologically as follows:

Date.	Pere Marquette.	Cincinnati, Hamilton & Dayton.
June 6, 1895	....	Organized, by consolidation of the Cincinnati, Hamilton & Dayton R. R. Co., the Cincinnati, Dayton & Chicago R. R. Co., and the Cincinnati, Dayton & Ironton R. R. Co., under Shoemaker-Woodford control and management, as of July 1, 1895.
Nov. 1, 1899	Organized, to consolidate the Flint & Pere Marquette R. R. Co., the Detroit, Grand Rapids & Western R. R. Co., and the Chicago & West Michigan Ry. Co., under Crapo-Thayer control and management, as of Jan. 1, 1900.	
Sept. 29, 1902	Prince stock syndicate formed............	
Dec. 29, 1902	Prince syndicate control began............	
May 19, 1904	....	C., H. & D. common stock syndicate formed.
July 7, 1904	Prince sold to C., H. & D., at $125 per share, 110,000 shares Pere Marquette common stock.	C., H & D. common stock syndicate control began.
July 21, 1904	Two C., H. & D. nominees elected directors.	
Aug. 16, 1904	....	Zimmerman-Hollins control of C., H. & D. syndicate began, and plan formulated to retire C., H. & D. 5 per cent preferred stock.
Mar. 1, 1905	Leased to the C., H. & D., all Pere Marquette treasury stock, 33,222½ shares becoming the property of the lessee.	Leased the Pere Marquette, and thereby became owner of 33,222½ shares Pere Marquette treasury stock, which, with shares previously purchased, established actual voting control.
Mar. 7, 1905	Board of directors reorganized with C., H. & D. nominees controlling.	Took control of Pere Marquette board.
Sept. 9, 1905	....	Zimmerman-Hollins stock holdings sold to J. P. Morgan & Co., the latter acting as agent for the Erie R. R. Co.
Oct. 20, 1905	....	Erie R. R. Co. formally purchased 74,059 shares of C., H. & D. stock and Erie nominees made officers and directors.

Date.	Pere Marquette.	Cincinnati, Hamilton & Dayton.
Oct. 25, 1905	Erie nominees made officers and directors..	
Nov. 29, 1905		Erie purchase of C., H. & D. stock rescinded.
Dec. 2, 1905		Agreement between Erie and Morgan & Co., whereby latter purchases the C., H. & D. stock from the former.
Dec. 4, 1905	George W. Perkins, representing Morgan & Co., elected to directorate.	
Dec. 4, 1905	Pere Marquette first receivership began....	C., H. & D. first receivership began; never formally terminated.
Aug. 12, 1907	Consolidation agreement between Pere Marquette and Pere Marquette of Indiana. Board reorganized with Morgan & Co. nominees as directors.	
Dec. 11, 1907	Consolidation agreement made effective by filing.	
Dec. 14, 1907	Pere Marquette reorganized; receivership terminated.	
Apr. 30, 1908	Harmon-Crapo arbitration award, one feature being that the lease of Pere Marquette by C., H. & D. was canceled as of Dec. 4, 1905.	
June 26, 1908		Negotiations opened between Morgan & Co. and Baltimore & Ohio R. R. Co., looking to the purchase by latter of Morgan & Co.'s holdings in C., H. & D.
July 1, 1909		Formal agreements, including the "purchase contract," were entered into whereby the finances of the C., H. & D. were readjusted and control taken over by Baltimore & Ohio.
Aug. 10, 1909		Baltimore & Ohio stockholders approved purchase of C., H. & D. control.
Aug. 18, 1909		Baltimore & Ohio management established with election of its nominees as directors.
Nov. 5, 1909	Board reorganized with Baltimore & Ohio nominees as directors.	
Feb. 27, 1911	Morgan & Co. agreed to purchase at $28 per share the 110,000 shares of Pere Marquette stock held by the C., H. & D. Morgan & Co.-Baltimore & Ohio "purchase contract" of July 1, 1909, supplemented, making the minimum price to be paid by the Baltimore & Ohio for Morgan & Co.'s C., H. & D. stock the equivalent of what Morgan & Co. were to pay the C., H. & D. for the latter's Pere Marquette stock.	
Feb. 27–28, 1911. Mar. 2, 1911	Baltimore & Ohio nominees resign from directorate; Morgan & Co. in control.	
Apr. 5, 1912	Second receivership began.	
Oct. 21, 1912	Morgan & Co.-Baltimore & Ohio "purchase contract" of July 1, 1909, again supplemented so as to make the previously agreed minimum price to be paid by the Baltimore & Ohio for the C., H. & D. stock the maximum price as well.	
July 2, 1914		Second receivership began.

The original accounts and records of the construction and operations of the various roads which from time to time have become part of these two systems are not in existence in complete form, but the record herein has been made up from such sources wherever available. The lack of such accounts and records has been overcome, where possible, by using reports made under oath by the officials of the constituent lines to federal and state authorities, and the record has been further supplemented by data contained in annual reports to stockholders.

Throughout this report exception is taken to the transactions of the carriers only when the record unqualifiedly justifies the exception. Any element of doubt, whether because of the lack of authoritative data, or because such data are not entirely clear, has been resolved in favor of the carrier.

Appendix 1 is a map of the Pere Marquette and C., H. & D. showing the components of the two roads and the connecting routes of the Chicago, Cincinnati & Louisville Railroad, the Erie Railroad, the Baltimore & Ohio system, and other lines considered in this report.

Appendix 2 is an abridged corporate history chart of the Pere Marquette system; Appendix 3 is a similar chart of the C., H. & D. system. Appendix 4 is a comparative statement of the property and finances of the Pere Marquette yearly for the period 1900–1914; a like statement covering the C., H. & D. for the years 1896–1914 is found in Appendix 5.

This report will treat first of the Pere Marquette, separately and completely; then of the C., H. & D. in like manner. Because of the intercorporate relation which existed between the two roads in 1904 and 1905 there is some necessary overlapping in the two portions of the report. The subtitles under which the facts of record are presented are as follows:

PERE MARQUETTE.

CINCINNATI, HAMILTON & DAYTON.

PERE MARQUETTE.

I. LOCATION AND TRAFFIC.

The Pere Marquette system as a part of the railroad map is not easily described in words. It has an east and west line from Chicago, Ill., through Detroit, Mich., and thence over its Canadian lines to the Niagara frontier; a north and south line between Chicago and Bay View, Mich., serving the east-side Lake Michigan points and the summer resort territory in the northwestern section of the lower peninsula of Michigan. Another through line runs from Ludington, Mich., in a general south and easterly direction through Saginaw, Mich., to Port Huron and Detroit, Mich., and to Toledo, Ohio. At Port Huron and Detroit connections are made with the Canadian lines, permitting through service east to the Niagara frontier. Much of

its exceptionally large branch-line mileage is colloquially described as serving the "web district," the western central part of the southern peninsula of Michigan; another extensive branch-line operation is in the so-called "thumb district" north of Detroit. By ferry service out of Ludington across Lake Michigan the west-side ports of Milwaukee and Manitowoc, Wis., are reached, giving connections with the northwest.

The road is, more than anything else, a local Michigan road. It serves with its owned lines a very large part of the population of the southern peninsula of that state. The branch lines operate through sparsely settled sections, producing a relatively light traffic. In this Michigan service it meets the competition of the Michigan Central, the Grand Rapids & Indiana, and the Ann Arbor, as north and south lines, and the Michigan Central and the Grand Trunk Western as east and west lines. Save the Ann Arbor, these competitors have system affiliations, which militate against the Pere Marquette in securing through business.

In years past the Pere Marquette's big tonnage was in forest products originating on its line. This has greatly decreased and now forms only a small part of the whole. The main traffic to-day is in coal, originating off its line. The strictly local tonnage is very largely short haul and, to a considerable extent, seasonal.

In the opinion of the present management the future of the road must lie in its tonnage of manufactured and agricultural products, but more in the manufactured, and especially in its through business. It is believed that there is great opportunity to increase this business, and the road's facilities are such that it can easily care for a large increase in traffic with small increase in operating expenses.

But in this connection it must be remembered that the Pere Marquette is not in an enviable position as to its western and eastern termini. To reach Chicago 40 miles of trackage rights over competitive lines are used from Porter, Ind., to its owned freight yard in Chicago, some 15 miles out. The ferry service to Milwaukee and Manitowoc operates the year round, but in each city the terminals are in whole or in part leased from lines competing with it for through business via the Chicago gateway. The rentals paid in reaching or using these western termini are admittedly high, and in its operations there the Pere Marquette suffers the disadvantage of exceptionally high switching absorptions.

On the east the Pere Marquette reaches the Niagara frontier, terminating at Black Rock, N. Y., but not at Buffalo proper. Here again the route involves the exercise of trackage rights over the line of a competitor, the Michigan Central, the distance of that operation being 133 miles from St. Thomas, Ontario, east. For the Pere

Marquette, that mileage is practically a bridge, and no more, as its contracts prohibit its engaging in local business on the Michigan Central. Furthermore, it does no less-than-carload business in Buffalo, and on all carload business to and from that city it must absorb terminal switching charges of its connections. Despite these conditions, and the further fact that it conducts no passenger service east of St. Thomas, the Pere Marquette management is of record as saying that the contract with the Michigan Central is an asset to the Pere Marquette.

From Chicago to the Niagara frontier the Pere Marquette forms the "long line," exceeding by some 50 miles the shorter routes of the Michigan Central and the Wabash. Its greatest through traffic east and west moves via Milwaukee and Manitowoc, and this is considered by the management to be the life of that portion of the road. But at those points, and especially at Milwaukee, the Pere Marquette has operated for years under contracts for terminal arrangements which are burdensome. One reason for this is undoubtedly the fact that the road from which the Pere Marquette secured its Milwaukee facilities was a competitor via the Chicago gateway, and demanded as rental 60 per cent of what its own revenue would have been had it handled the traffic via Chicago.

These various difficulties attending the operation of the routes through Chicago and Milwaukee to the east are somewhat offset, though by no means counterbalanced, by the fact that the Pere Marquette's route from Manitowoc through Ludington to the Buffalo district makes the short line from the northwest to the east and avoids the congestion of the Chicago gateway. But although this route has been open since 1897 it does not get the traffic which its management feels it should. As to this it must be remembered that the Pere Marquette leases its terminal facilities in Manitowoc from connecting roads which also operate through Chicago, and which, should they deliver eastbound traffic to the Pere Marquette at Manitowoc, would necessarily short haul themselves.

At its other principal points the Pere Marquette is in a more favorable situation as to terminals, either owning them solely or jointly or leasing under long term contracts which seem satisfactory to the management.

II. EARLY HISTORY, TO JANUARY 1, 1900.

To ascertain, if possible, what real value there was in the properties consolidated into the Pere Marquette as of January 1, 1900, an analysis has been made of their financial history. The three constituent companies which ceased operations December 31, 1899, were the Flint & Pere Marquette Railroad Company, the Detroit, Grand Rapids & Western Railroad Company, and the Chicago &

West Michigan Railway Company. As of their closing business day, the balance sheets of these three roads consolidated into one joint balance sheet are shown below:

Flint & Pere Marquette Railroad Company, Detroit, Grand Rapids & Western Railroad Company, and Chicago & West Michigan Railway Company consolidated general balance sheet, December 31, 1899.

ASSETS.

Investments:		
Investment in road and equipment	$48, 068, 054. 06	
Sinking funds	22, 180. 49	
Miscellaneous physical property	53, 984. 12	
Investment in affiliated companies	1, 670, 714. 71	
Other investments	100. 00	
Total investments		$49,815,033. 38
Current assets:		
Cash	492, 876. 83	
Special deposits	3, 860. 00	
Loans and bills receivable	158, 048. 79	
Traffic and car service balance receivable	11, 139. 27	
Net balance receivable from agents and conductors	267, 861. 63	
Miscellaneous accounts receivable	391, 891. 16	
Material and supplies	208, 032. 06	
Interest and dividends receivable	3, 437. 50	
Total current assets		1, 537, 147. 24
Deferred assets:		
Working fund advances		48, 202. 01
Unadjusted debits:		
Rents and insurance premium paid in advance	60. 72	
Other unadjusted debits	407, 791. 74	
Securities issued or assumed, unpledged	(785, 058. 12)	
Total unadjusted debits		407, 852. 46
Total		51, 808, 235. 09

LIABILITIES.

Stock:		
Capital stock		22, 846, 241. 88
Long term debt:		
Funded debt unmatured		24, 482, 168. 13
Current liabilities:		
Loans and bills payable	100, 000. 00	
Traffic and car service balance payable	137, 480. 87	
Audited accounts and wages payable	979, 313. 06	
Miscellaneous accounts payable	14, 651. 54	
Interest matured unpaid	685, 643. 85	
Dividends matured unpaid	1, 203. 00	
Unmatured interest accrued	223, 077. 89	
Total current liabilities		2, 141, 370. 21

Unadjusted credits:		
Tax liability	$197,585.63	
Other unadjusted credits	17,657.09	
Total unadjusted credits		$215,242.72
Corporate surplus:		
Sinking fund reserves	13,000.00	
Profit and loss—balance	2,110,212.15	
Total corporate surplus		2,123,212.15
Total		51,808,235.09

The total capital stock issues of these three constituents and their components, from the records now available, aggregated $43,617,613.69. In accounting for the proceeds of those capital stock issues it is necessary to account twice for $582,760 because of the following circumstances: The Chicago & West Michigan Railway Company reissued to the amount of $582,760 stocks which it had acquired through an investment of its predecessor, the Chicago & West Michigan Railroad Company, in the stocks of roads afterwards consolidated with the latter to form the Chicago & West Michigan Railway Company. Previous to that consolidation the Chicago & West Michigan Railroad Company had purchased and carried as an investment certain stocks of the Grand Haven and the Grand Rapids, Newaygo & Lake Shore railroad companies. Under the plan of consolidation the new company's stock was issued in exchange for that of the constituents, and thus the Chicago & West Michigan Railway Company by this exchange became the owner of part of its own stock. This was placed in its treasury and subsequently reissued.

Thus the total proceeds to be accounted for are $44,200,373.69, made up from the records now available, as follows:

Cash	$13,761,284.51
Construction or property	772,615.44
Exchanged for:	
Bond and other interest	3,613,104.38
Bills payable	68,649.40
Accounts payable	102,983.24
Stock of predecessor companies for which no records are available to show proceeds	122,900.00
Total consideration	18,441,536.97
Bonus, discount, commissions, etc	12,308,321.72
Donations: Stock issued against previous donations	34,690.00
Exchanged for stock of predecessor companies	13,415,825.00
Total	44,200,373.69

On December 31, 1899, there was outstanding only $22,846,241.88 of the original issues, which aggregated $43,617,613.69. The difference is accounted for thus:

There was lost to the holders thereof in foreclosures, reorganizations, and other changes in the various companies the following:

	Par value.
In the Detroit, Grand Rapids & Western group:	
Detroit, Lansing & Lake Michigan	$1,680,600.00
Detroit, Lansing & Northern	1,825,600.00
Saginaw & Western	4,500.00
Saginaw Valley & St. Louis	264,804.01
Saginaw & Grand Rapids	20,700.00
Grand Rapids, Lansing & Detroit	28,000.00
In the Chicago & West Michigan group:	
Chicago & Michigan Lake Shore	1,513,167.80
Grand Rapids, Newago & Lake Shore	366,700.00
Grand Haven	400,000.00
Total	6,104,071.81
There was exchanged for stocks of successor companies	13,415,825.00
There was canceled by the Detroit, Grand Rapids & Western Railroad Company when it acquired title to the property of the Saginaw & Grand Rapids Railroad Company its stock holdings in the latter to the value of	36,975.00
There was canceled by the Chicago & West Michigan Railway Company when it acquired title to the physical property of the White River Railroad Company its stock holdings in the latter to the value of	124,500.00
There was paid by the Flint & Pere Marquette Railroad Company for the physical property of the Port Huron & Northwestern Railway Company, free of encumbrances, $2,300,000. The records now available do not disclose what distribution thereof was made by the vendor corporation to the holders of its bonds, outstanding to the amount of $1,806,000, or to the holders of its outstanding stock to the amount of	1,090,000.00
Total	20,771,371.81

In taking up next the analysis of the funded debt issues of the Pere Marquette's constituents and their components to December 31, 1899, it should be first pointed out that in the foregoing capital stock analysis there have already been accounted for the proceeds of $15,940,505.50 of such funded debt, being that which had been subordinated at one time or another to capital stock. According to the joint balance sheet above the funded debt of the three constituent carriers outstanding at the cessation of business on December 31, 1899, was $24,482,168.13. The Flint & Pere Marquette had issued the following funded securities, which were not carried as liabilities on its books:

Pere Marquette Transportation Company bonds	$200,000
Morley & Potter bonds	120,000

The former company was organized in the interest of the Flint & Pere Marquette to construct and operate "car ferry No. 15"; the latter issue was an ordinary car trust. On December 31, 1899,

$140,000 of Pere Marquette Transportation Company bonds and $105,000 of Morley & Potter bonds were outstanding. Both these bond issues were then assumed by the Pere Marquette, although the latter was not written up until some time after the reorganization and at a date when it had been reduced by installment payments to $66,000. Furthermore, the Chicago & West Michigan had issued and outstanding on December 31, 1899, coupon scrip to the amount of $663,622.50. This was included in the joint balance sheet as of that date as "interest matured unpaid," but has been treated as funded debt. Therefore, the actual amount outstanding on December 31, 1899, was $25,390,790.63.

On the part of all the system lines the gross funded debt issues to the close of 1899 amounted to $56,182,666.10. There remain, therefore, $40,242,160.60 of the funded debt issues over and above the $15,940,505.50, the proceeds of which have already been accounted for in the capital stock analysis. The return to the issuing roads for these $40,242,160.60 was as below:

Cash	$25, 746, 254. 58
Construction or property	2, 367, 201. 22
Exchanged for:	
Bond and other interest	1, 498, 521. 19
Bills payable	299, 000. 00
Receivers' certificates	109, 212. 50
Miscellaneous fractional certificates and scrip	15, 050. 54
Total consideration	30, 035, 240. 03
Discount, commissions, and expenses	1, 455, 945. 57
Exchanged for bonds of predecessor companies	8, 597, 000. 00
Exchanged for purchase of stock of predecessor companies, the proceeds from which are accounted for in stock analysis	153, 975. 00
Total	40, 242, 160. 60

The retirement of funded securities other than $8,597,000 by exchanged bonds amounted to $6,005,369.97. No records are available to show disposition of $249,000, leaving the balance of $25,390,790.63 outstanding December 31, 1899.

Thus it appears that as a result of all their issues of capital securities which have been located the roads forming the Pere Marquette had obtained up to December 31, 1899, proceeds aggregating the following:

Cash	$39, 507, 539. 09
Construction or property	3, 139, 816. 66
Exchanged for:	
Bond and other interest	5. 111, 625. 57
Bills payable	367, 649. 40
Accounts payable	102, 983. 24
Receivers' certificates	109. 212. 50

Exchanged for—Continued.	
Stock of predecessor companies for which no records are available to show proceeds	$122,900.00
Miscellaneous fractional certificates and scrip	15,050.54
Total consideration	48,476,777.00
Bonus, discount, commissions, etc	13,764,267.29
Donations: Stock issued against previous donations	34,690.00
Exchange of securities of carriers' own issue	22,166,800.00
Total	84,442,534.29

It is practically impossible in the older accounts and records to ascertain exactly how the cash realized from the various security issues was expended. For that matter the task is almost equally impossible in the accounts and records of comparatively recent years. But manifestly the retirement of $6,005,369.97 up to December 31, 1899, must have been accomplished by the use of the proceeds of the later issues. The financial experiences of these earlier roads would make retirement by any other means highly improbable, if not impossible. Of significance also in that connection is the fact that of fifty-six millions of funded debt issued, and on the cash sales of which the average discount was less than 10 per cent, almost sixteen millions were subordinated in reorganizations and surrendered for capital stock.

The three constituents on December 31, 1899, carried in accounts covering investment in road and equipment $48,068,054.06. There are no accounts or records available permitting any analysis whatever of some $18,403,978.49 of this. Most of this sum was charged in the earlier years, and covered original construction. More or less complete accounts and records exist as to the remainder of $29,664,-075.57. An analysis of whatever such accounts and records are available, accepting all entries at their face value in the absence of supporting documents, indicates an inflation in the charge to cost of road and equipment of $5,253,240.11. This is made up as follows:

	Charges.	Credits.
Discount and expenses on securities—less premiums	$1,224,477.69	
Adjustments of account, incident to reorganizations	2,899,804.48	$1,101,328.29
Stock bonus, net	3,556,494.44	
Operating expenses	65,554.90	
Depot and other rentals	95,624.74	
Interest	2,022.22	
Expenses incident to donations	877.92	
Depreciation of road	397.51	
Miscellaneous items	40.00	1,378.80
Construction charged elsewhere		950,780.10
Property acquired, not written up		41,342.59
Profit constructing subsidiary road		28,657.41
Operating income		62,779.26
Income from investments		191,065.67
Donations		7,367.76
Land grant account, net		207,353.91
Total	7,845,293.90	2,592,053.79
Net improper charges		5,253,240.11
Total	7,845,293.90	7,845,293.90

Passing now from the capital accounts to those covering operations, it appears that, as shown on the joint balance sheet of December 31, 1899, set out above, there was on that date a book surplus of $2,123,212.15 in the accounts of the Flint & Pere Marquette, the Detroit, Grand Rapids & Western, and the Chicago & West Michigan. In this connection there is next presented a consolidation of the income and profit and loss accounts of each road which eventually become a part of the Pere Marquette January 1, 1900, and for which the necessary data are available. There is good ground to believe that such roads as appear in the corporate history chart, Appendix 2, whose operations are not accounted for in this next table, never in fact conducted any operations; certain it is that if they did, such operations were not very extensive or very long continued.

Income account:		
Railway operating revenues		$134, 164, 947. 36
Railway operating expenses		91, 481, 816. 67
Net revenue from railway operations		42, 683, 130. 69
Railway tax accruals		3, 050, 560. 33
Railway operating income		39, 632, 570. 36
Nonoperating income		781, 905. 08
Gross income		40, 414, 475. 44
Deductions from gross income		36, 035, 625. 49
Net income		4, 378, 849. 95
Net income Flint & Pere Marquette Ry. Co., 1857-1871, for which no details are available		92, 854. 91
Total carried to profit and loss		4, 471,704. 86
Profit and loss:		
Credits—		
Balance transferred from income	$4, 471, 704. 86	
Donations	177, 389. 18	
Miscellaneous credits	2, 262, 145. 21	
Total credits		6, 911, 239. 25
Debits—		
Dividends	9, 074, 399. 50	
Surplus appropriated for investment in physical property	160, 376. 66	
Surplus applied to sinking and other reserve funds	7, 800. 00	
Miscellaneous appropriations of surplus	65, 000. 00	
Loss on retired road and equipment	67, 243. 45	
Debt discount extinguished through surplus	2, 579, 496. 95	
Miscellaneous debits	1, 296, 700. 91	
Total debits		13, 251, 017. 47
Balance to debit of profit and loss		6, 339, 778. 22

The dividends disbursed as shown above, $9,074,399.50, are reported in detail in Appendix 6.

The almost invariable end of the many unsuccessful operations indicated by the preceding table was receivership and reorganization. As a result thereof the accrued deficit of the old company was usually in fact or in effect capitalized in the securities of its successor, the latter thereby being enabled to begin business with a clear balance sheet. This practice of capitalizing the deficit is the explanation of the difference between the final result reached in the consolidated income and profit and loss statement above, an aggregate loss to December 31, 1899, and the showing of $2,123,212.15 surplus on the joint balance sheet of the three constituents as of that date. Not infrequently in those reorganizations first and second mortgage bonds were subordinated to preferred and common stock, and in some instances the common stock was wiped out of existence to make room for a new common to take up old preferred. The results of such exchanges of securities are indicated in the foregoing recital of the return to these corporations for their various bond and stock issues.

It will accomplish nothing to attempt to ascertain from the various preceding tables exactly what these many companies up to December 31, 1899, had expended in the construction and equipment of their properties. But along that line the following deductions may be made as indicating the limit of their possibilities in that direction.

Their security issues produced in cash and property, over and above the proceeds used for retirement of funded debt, the amount of $36,641,985.78. Their financial experience was such as to negative the suggestion that capital assets were extensively paid for out of current income, if, indeed, it does not warrant the conclusion that the converse was true and that current obligations were paid for out of the proceeds of funded debt. It has already been shown that this was accomplished in effect by the capitalization of bond interest, bills payable, and open accounts.

It seems entirely in accordance with the facts before us to say that, were complete accounts and records available for all these older roads, showing the details of all the original construction, wherein stock bonuses are most common, it would be found that the actual investment in their properties up to December 31, 1899, never exceeded $35,000,000. Their book value as of that date was $48,068,054.06.

The financial history of the Pere Marquette's predecessors may be summarized by the statement that those roads were uniformly poor, except in the decade 1880–1890 and for a few years thereafter. In those particular years southern Michigan was in

its prime as a lumber-producing territory. That the Pere Marquette's predecessors were primarily lumber roads, and some probably of the class known as "tap lines" to-day, is certain as to some and fairly to be deduced from record, especially as to tonnage statistics and financial experience, of more. A study of the tonnage statistics shows that when the lumber production was at its height forest products comprised 60 to 75 per cent of the aggregate traffic of these early roads. Even as late as 1900, the first entire calendar year of operation by the new Pere Marquette, these commodities furnished 30 per cent of the road's tonnage, and five-sixths of that originated on the line. By 1914 that class of tonnage had not only decreased 20 per cent in the absolute, compared with 1900, but relatively it furnished only 12 per cent of the company's total traffic, and the major portion originated with foreign roads.

The prosperity of the predecessor roads was not sufficiently solid to continue dividends in the panic years beginning with 1893. During those years the Detroit, Lansing & Northern and the Chicago West Michigan accrued deficits, while the Flint & Pere Marquette barely earned expenses and fixed charges. The Detroit, Lansing & Northern went into receiver's hands, and was reorganized in 1896 as the Detroit, Grand Rapids & Western.

III. ORGANIZATION OF 1900.

The original Pere Marquette Railroad Company was formed under Michigan laws on November 1, 1899, in contemplation of the consolidation of the properties of the Flint & Pere Marquette Railroad Company, the Detroit, Grand Rapids & Western Railroad Company, and the Chicago & West Michigan Railway Company. The mileage of these three roads was as follows:

	Miles.
Flint & Pere Marquette	689.71
Detroit, Grand Rapids & Western	380.00
Chicago & West Michigan	581.11
Total	1,650.82

Of this the only portion outside of southern Michigan was a short branch of the Chicago & West Michigan in the state of Indiana. This branch is now operated as a "proprietary" line, although it has been conveyed to and is a book asset of the Pere Marquette. These three constituent roads did not meet in direct competition at any point, and such competition by two of them existed at only a very few places. Nor could it be said that they, or any two of them, were in "cross-country competition" to any considerable extent.

The organization of the Pere Marquette had been preceded by extended negotiations between the parties controlling the three constituent roads, and on May 20, 1899, there had been addressed to their stockholders by a committee composed of members of their directorates what was termed "a plan for the union and readjustment of the capitalization of the above-mentioned companies." This was the foundation of an agreement of the same date between the committee, trust companies named therein as depositaries for the stock of the roads, and such stockholders as should deposit their stock under the agreement. The committee which handled this reorganization remained intact throughout, and was composed of William W. Crapo, Mark T. Cox, John M. Graham, Charles M. Heald, Charles Merriam, Oliver W. Mink, Thomas F. Ryan, and Nathaniel Thayer.

Apparently New England and New York capital and capitalists dominated the affairs of the constituent carriers, planned and consummated the reorganization and consolidation, and directed the affairs of the new Pere Marquette during its first three years of operation.

More than 95 per cent of the stock of the constituent companies was deposited with the committee under the plan and agreement in assent thereto. Each of the three constituent roads conveyed all its railroad property to the new Pere Marquette in December, 1899, and in return the Pere Marquette assumed their funded and other debts and obligations, and issued to each certain of the new Pere Marquette capital stocks, in accordance with the plan and contracts made supplementary thereto. These issues were as follows:

To—	Common stock, par value.	Preferred stock, par value.
Flint & Pere Marquette	$4,663,234	$7,488,930
Detroit, Grand Rapids & Western	2,839,054	4,511,070
Chicago & West Michigan	8,497,712	None.
Total	16,000,000	12,000,000

At that time the outstanding stocks of the constituent roads, including treasury fractional shares amounting to $258.12, were:

Road.	Common stock, par value.	Preferred stock, par value.
Flint & Pere Marquette	$3,298,200	$6,342,000
Detroit, Grand Rapids & Western	2,510,000	3,183,500
Chicago & West Michigan	7,512,800	None.
Total	13,321,000	9,525,500

The new capital stock did not pass directly to the predecessor corporations. It all went, under the contracts supplementing the reorganization plan, to the committee "as full paid and nonassessable stock." That committee on February 1, 1902, in an agreement between it, two of its members as trustees, and the Pere Marquette, reported as follows regarding its disposition of the $28,000,000 of stock which it had received:

Statement by the readjustment committee to the Pere Marquette Railroad Company of the manner in which that company's capital stock has been disposed of.

	Preferred stock.	Commom stock.
Delivered to Old Colony Trust Company for distribution among the depositors of stock of the Detroit, Grand Rapids & Western Railroad Company, and the Chicago & West Michigan Railway Company, pursuant to the above-mentioned plan and agreement	$3,820,200	$9,998,700
Delivered to the State Trust Company for distribution among the depositors of the stock of the Flint & Pere Marquette Railroad Company, pursuant to said plan and agreement	6,338,200	4,108,500
Disposed of in acquiring stock of the old companies not deposited under the plan, providing for expenses of the committee and otherwise under said plan	350,000	20,000
Total disposed of	10,508,400	14,127,200
Held by William W. Crapo and Mark T. Cox, trustees, to take up outstanding stock of old companies	3,800	38,350
	10,512,200	14,165,550
On hand for delivery to William W. Crapo and Mark T. Cox, as trustees pursuant to the agreement of this date between said trustees, the committee, and the Pere Marquette Railroad Company	1,487,800	1,834,450
Total	12,000,000	16,000,000

In the same agreement it was provided that the stock remaining on hand with the committee, $1,834,450 of common and $1,487,800 of preferred, should be delivered to Messrs. Crapo and Cox, as trustees for the Pere Marquette. This was done under that provision of the reorganization plan whereby the committee could "place in trust any part of the new securities to be issued * * * as they may deem judicious * * * for the uses * * * of the new company." The agreement also constituted a ratification by the Pere Marquette of the disposition of its stock by the committee, and released the committee from all liability as such.

To summarize these capital stock transactions, as of January 1, 1900, it appears that of the Pere Marquette's $28,000,000 of new capital stock, the amount of $24,307,750, including $1,461,250 of bonus, went to take up stocks of the predecessor roads aggregating $22,-846,500; an additional $370,000 covered reorganization expenses, of which no record exists beyond the report of the readjustment committee that it was disposed of in acquiring stock of the old companies not deposited under the plan, providing for the expenses of the committee, and otherwise under the said plan, and $3,322,250 was

left in the hands of trustees for the company. But all of this $28,000,000 was immediately charged up as "cost of road" at the time of the reorganization and consolidation.

The new company at the same time assumed the funded debt of its constituents as follows:

Holly, Wayne & Monroe 8 per cent firsts	$1,000,000.00
Flint & Pere Marquette 6 per cent firsts	4,000,000.00
Flint & Pere Marquette 5 per cent consolidated	2,600,000.00
Flint & Pere Marquette 5 per cent P. H. division	3,325,000.00
Flint & Pere Marquette 5 per cent Toledo division	400,000.00
Ionia & Lansing 5 per cent firsts [1]	1,000.00
Detroit, Grand Rapids & Western 4 per cent consolidated	5,379,168.13
Chicago & West Michigan 5 per cent bonds	5,758,000.00
Chicago & North Michigan 5 per cent bonds	1,667,000.00
Grand Rapids, Newago & Lake Shore 7 per cent bonds [1]	19,000.00
Michigan Equipment Co. 6 per cent bonds [1]	205,000.00
Western Equipment Co. 6 per cent bonds	128,000.00
Total	24,482,168.13

Along therewith it also assumed $663,622.50 coupon scrip of the Chicago & West Michigan, and the $140,000 of 6 per cent "car ferry No. 15" bonds of the Pere Marquette Transportation Company, and $105,000 Morley & Potter "series B cars" bonds, already mentioned. The total funded liabilities assumed January 1, 1900, thus aggregated $25,390,790.63.

The new Pere Marquette at its inception also acquired minor investments and current and deferred assets of the constituents, and therewith assumed their current and deferred liabilities. These were as follows:

Road.	Assets.	Liabilities.
Flint & Pere Marquette	$1,061,446.57	$923,209.93
Detroit, Grand Rapids & Western	677,937.56	374,680.03
Chicago & West Michigan	612,639.97	414,240.92
Total	2,352,024.10	1,712,130.88

The new corporation, in opening up its books on January 1, 1900, wrote up as its capital asset, "cost of road and equipment," the sum of $52,645,897.41, being its capital stock issues and the funded debt assumed, less the excess of the predecessors' other assets acquired over other liabilities assumed. Taking into consideration subsequent adjustments of those current accounts, resulting in additional

[1] Portions of original issues.

net assets of $287,612.94, the ultimate charge to cost of road and equipment, in the reorganization of January 1, 1900, was as below:

Pere Marquette capital stock issued	$28,000,000.00
Predecessors' funded debt assumed	25,285,790.63
	53,285,790.63
Less predecessors' other assets and liabilities, net	927,506.16
Adjusted total as of Jan. 1, 1900	52,358,284.47

The property thus written up consisted of the above-described railroads, aggregating 1,650.82 miles in length, and their equipment, all of which on their accounts stood at a cost of only $48,068,054.06, and this latter total being subject to exceptions, as heretofore stated.

IV. CHANGES IN CONTROL, 1900 AND THEREAFTER.

1. *Crapo-Thayer control, 1900.*—The Pere Marquette's first permanent board of directors, organized in December, 1899, was composed of the following:

Representing Flint & Pere Marquette interests: Stanford T. Crapo, W. W. Crapo, Oliver W. Mink, John M. Graham, Thomas F. Ryan, Frederick H. Prince.

Representing Detroit, Grand Rapids & Western and Chicago & West Michigan interests: Charles W. Heald, Charles Merriam, Nathaniel Thayer, Mark T. Cox, H. H. Hunnewell.

This board continued until December 29, 1902, except that H. H. Hunnewell was succeeded by Walter Hunnewell on May 2, 1900. W. W. Crapo was elected its chairman and Charles M. Heald president of the new Pere Marquette, and both continued as such until the change in management on December 29, 1902.

2. *Prince syndicate control, 1903.*—This change was the result of the operations of a syndicate headed by Frederick H. Prince, of Boston, one of said directors. It was formed under a certain
arquette Railroad Company share syndicate agreement,"
ptember 29, 1902. This provided not only for buying and
ng certain of the common stock but also for holding it in a
ust for five years, the syndicate managers being the voting
Before the syndicate took definite shape the dominating
had, under date of September 5, 1902, secured options for
of Pere Marquette common stock from Nathaniel Thayer,
'ere Marquette director, and from others, and had arranged
n expansions of the road, particularly into Canada. These options first covered a maximum of 50,000 shares, with rights to 50,000 more. Subsequently, on September 27, 1902, they were increased to cover a maximum of 85,000 shares, with rights on the other 15,000, all at a price of $85 per share.

This Pere Marquette syndicate seemingly included two groups, an eastern group from New England, New York, and Philadelphia, and a St. Louis group. The syndicate agreement was subscribed as follows:

Names of subscribers.	Pere Marquette common shares.	Names of subscribers.	Pere Marquette common shares.
Eastern group (total, 74,500 shares):		St. Louis group (total, 12,000 shares)—Continued:	
Newman Erb	6,000	Mary F. Scanlan	500
B. F. Yoakum[1]	5,000	Philip C. Scanlan	250
Thomas F. Ryan	5,000	Thomas H. West[1]	750
D. B. Flint	500	R. S. Brookings[1]	750
Provident Life & Trust Co. (Philadelphia, Pa.)	5,000	W. K. Bixby[1]	750
B. P. Cheney[2]	2,000	I. W. Morton[1]	500
F. H. Prince & Co	20,000	B. B. Graham[1]	500
Mark T. Cox	5,000	Henry C. Haarstick[1]	300
E. Summerfield	1,000	Edwards Whitaker[1]	300
F. H. Prince	20,000	Robert McK. Jones[1]	300
Frederick Ayer	4,500	Daniel Catlin[1]	500
Charles F. Ayer	500	Irwin Z. Smith	400
St. Louis group (total, 12,000 shares):		A. C. Stewart[1]	500
Edward Mallinckrodt[1]	500	John L. Boland[1]	750
John F. Shepley[1]	800	Thomas H. McKittrick[1]	500
M. C. Wetmore	800	N. A. McMillan[1]	250
Joseph Lathrop	300	H. P. Taussig	500
Wm. E. Guy[1]	200	L. M. Rumsey[1]	150
A. G. Edwards & Sons	400	Charles F. Bates	300
George O. Carpenter	250		
A. C. Church	500	Total	86,500

[1] Was then a director or officer of the St. Louis Union Trust Co., of St. Louis, Mo.
[2] Was then a director of the Old Colony Trust Co., of Boston, Mass.

The actual participation was somewhat different. According to the record of the Old Colony Trust Company, of Boston, the depositary, subscriptions were paid in covering only 73,115½ shares, as follows:

Subscriptions under terms of Pere Marquette Railroad Company syndicate agreement dated September 29, 1902, and payments on account of same.

Subscription receipt issued in name of—	Shares.	Amount of subscription at $85 per share.	First payment, 25 per cent.	Second payment, 25 per cent.	Third payment, 25 per cent.	Fourth payment, 25 per cent.
Provident Life & Trust Co., Philadelphia, Pa	5,000	$425,000.00	$106,250.00	$106,250.00	$106,250.00	$106,250.00
B. F. Yoakum	3,000	255,000.00	63,750.00	21,250.00	21,250.00	....
F. H. Prince & Co	23,217½	1,973,487.50	493,371.88	493,371.87	493,371.88	501,829.37
F. H. Prince & Co. (a/c F. Ayer, subr.)	4,500	382,500.00	95,625.00	95,625.00	95,625.00	95,625.00
F. H. Prince & Co. (a/c C. F. Ayer, subr.)	500	42,500.00	10,625.00	10,625.00	10,625.00	10,625.00
F. H. Prince & Co. (a/c B. P. Cheney, subr.)	2,000	170,000.00	42,500.00	63,750.00	63,750.00	42,500.00
F. H. Prince & Co. (a/c D. B. Flint, subr.)	500	42,500.00	10,625.00	10,625.00	10,625.00	....
Newman Erb	5,000	425,000.00	106,250.00	106,250.00	106,250.00	106,250.00
E. Summerfield	1,000	85,000.00	21,250.00	21,250.00	21,250.00	21,250.00
Street, Wykes & Co	1,000	85,000.00	21,250.00	21,250.00	21,250.00	21,250.00
Nathaniel Thayer	5,000	425,000.00	106,250.00	106,250.00	106,250.00	106,250.00
Mark T. Cox	5,000	425,000.00	106,250.00	106,250.00	106,250.00	106,250.00
Thomas F. Ryan	5,000	425,000.00	106,250.00	....	....	....
St. Louis Union Trust Co. (St. Louis group)	12,000	1,020,000.00	255,000.00	255,000.00	255,000.00	255,000.00
F. H. Prince & Co	398	33,830.00	8,457.50	8,457.50	8,457.50	....
James Campbell	....	....	....	21,250.00	21,250.00	....
J. I. Burke	....	....	....	106,250.00	106,250.00	106,250.00
George R. Richards	....	....	....	....	....	10,625.00
Charles A. Stetson	....	....	....	....	....	63,750.00
Total	73,115½	6,214,817.50	1,553,704.38	1,553,704.37	1,553,704.38	1,553,704.37

It will be observed that after the first payments there were several transfers of interest in the eastern group. A summary of these appears below, but whether or not the actual beneficial interest passed is not disclosed. Subsequent changes in the directorate would indicate that it did not in all cases.

Pere Marquette R. R. Co. syndicate agreement of September 29, 1902. Memorandum of transfers of subscription receipts.

Date.	Transferred by—	Amount of subscription.	Transferred to—	Amount of subscription.
Dec. 11, 1902	Thomas F. Ryan	$425,000.00	J. I. Burke	$425,000.00
Dec. 26, 1902	B. F. Yoakum	85,000.00	B. P. Cheney	85,000.00
Jan. 7, 1903	.....do	85,000.00	James Campbell	85,000.00
Aug. 4, 1903	B. P. Cheney	85,000.00	Charles A. Stetson	85,000.00
Do	B. F. Yoakum	85,000.00	.....do	85,000.00
Do	James Campbell	85,000.00	.....do	85,000.00
Aug. 6, 1903	F. H. Prince & Co	42,500.00	George R. Richards	42,500.00

The St. Louis group also underwent changes in composition, although throughout the existence of the syndicate, and of the voting trust which succeeded it, their 12,000 shares were handled *en bloc* through the St. Louis Union Trust Company. By the time the voting trust terminated the changes in the St. Louis group had been as follows:

	Shares.
William E. Guy had disposed of his entire	200
John F. Shepley had decreased his holdings by	500
Thomas H. West had decreased his holdings by	250
John L. Boland had decreased his holdings by	250
H. P. Taussig had decreased his holdings by	100
Charles F. Bates had decreased his holdings by	150
Total decreases	1,450
M. C. Wetmore had increased his holdings by	200
Robert Abeles had acquired	100
Adolph H. Stille had acquired	100
Holbrook, Blackwelder R. E. Trust Co. had acquired	250
J. H. Allen had acquired	250
F. H. Hamilton had acquired	50
P. C. Maffitt had acquired	150
Franklin Bank had acquired	100
Morris Glaser had acquired	250
Total increases	1,450

December 5, 1902, was the last day for payment under the September options. As of that date the syndicate managers, F. H. Prince, John F. Shepley, and F. P. Pegram, entered into a "Pere Marquette share purchase" agreement with Nathaniel Thayer, Mark T. Cox, and Thomas F. Ryan, a committee representing holders of stock who had agreed to sell under the options of September

5, 1902, and had deposited their shares with the Old Colony Trust Company.

Under the share purchase agreement the vendors required payment to the extent of 25 per cent plus $400,000 on December 5, 1902, and deferred payments of 25 per cent each to be made with interest, on or before the 5th days of the succeeding months of April, August, and December, 1903, save that on the last payment there should be applied the $400,000 deposited with the first. Delivery of 25 per cent of the shares was to be made to the order of the syndicate managers contemporaneously with each of the four payments. The vendors' committee also agreed to pay to the order of the syndicate managers a banker's commission of $1 for every share paid for by the syndicate managers or by any subscriber to the syndicate agreement. Upon the order of those managers the Old Colony Trust Company paid to F. H. Prince & Company $74,866.86 as such commission in these transactions.

The agreement further provided:

The committee shall have full power and authority to represent and act for the depositors in all matters respecting or relating to the said shares and all rights therein, and shall have full power and authority to agree to any alterations or amendments in this agreement with the consent of the syndicate managers, and this agreement may be altered or amended by the consent of the committee and the syndicate managers at any time. After the 5th of December, 1902, the committee shall use their influence to create such vacancies on the board of directors of the railroad company that three new members of the said board shall be nominated by the syndicate managers.

The vendors represented by Thayer, Cox, and Ryan deposited for sale 73,115¼ shares of Pere Marquette common. Of this amount over 52,500 shares seem to have been turned in by the Thayer, Cox, Ryan, and Hunnewell interests. The Old Colony Trust Company, as it received the stock, issued voting trust certificates therefor to the beneficiaries under the syndicate agreement. Such certificates finally aggregated 90,482 shares, including 73,115 under the syndicate agreement, and 17,367 additional deposited by F. H. Prince & Company with the permission of the syndicate managers, as full payment of their subscription to the syndicate.

A reorganization of the board was to be expected shortly after December 5, 1902. It came on December 29, 1902, when there were elected as directors the following: Myron J. Carpenter, Wm. K. Bixby,[1] Newman Erb,[1] Samuel R. Shipley,[1] Thomas F. Ryan,[1 2] F. H. Prince,[1] Thomas H. West,[1] Charles Merriam, Nathaniel Thayer,[2] Mark T. Cox,[1 2] Walter Hunnewell.[2]

[1] Were members of, or represented members of, the Pere Marquette syndicate.

[2] These four interests furnished more than a majority of the stock purchased by the syndicate.

Prince at the same time became president, and Cox and Erb vice presidents, and Myron J. Carpenter was made vice president and general manager. During the next year George H. Norman succeeded Hunnewell as a director on May 6, 1903, and when the number of directors was increased to 13 Maxwell Norman and Guy H. Norman were elected on October 20, 1903. The Normans were relatives of Prince.

The Prince syndicate with 90,482 shares of common did not own a majority control of the Pere Marquette stock. As shown already in the discussion of the company's organization, 33,222½ shares of the 280,000 issued remained in the hands of trustees for the road. This, though really treasury stock, was not recorded as such. There is no doubt that the Prince syndicate exercised a voting control, either of itself or by association with the individual interests of its members, and also through the power, which was exercised, of voting the 33,222½ shares of treasury stock.

The control by the Prince interests of much more than the syndicate holdings is indicated by the fact that on July 7, 1904, Prince & Company sold to the C., H. & D. 110,000 shares of Pere Marquette common, and that this block did not include all of the syndicate holdings. The details of this transaction appear later on.

3. *C., H. & D. syndicate, and Zimmerman-Hollins control, 1904.*—When the C., H. & D. purchased the 110,000 shares it did not thereby acquire a majority interest, but the means to such an interest was contemplated, and in fact was actually secured to it by contemporaneous transactions. Later, on March 1, 1905, actual ownership of the 33,222½ shares of Pere Marquette treasury stock was acquired, as is later recited.

It naturally followed that soon after July 7, 1904, C., H. & D. representatives went on the Pere Marquette board, and C., H. & D. nominees became its high officials. Then, after the treasury stock became the C., H. & D.'s property, by reason of its lease of the Pere Marquette on March 1, 1905, the latter's board was again reorganized, and the C., H. & D. interests, representing the Zimmerman-Hollins management, took full charge.

4. *Morgan control, from 1905.*—The next important changes came when the control of the C., H. & D., and incidentally of the Pere Marquette, passed to the Erie Railroad Company. Representatives of the Erie took charge of the Pere Marquette management on October 20, 1905. Shortly thereafter upon the rescission of the Erie's purchase of the C., H. & D. from J. P. Morgan & Company, George W. Perkins, of the latter firm, on December 4, 1905, went on the Pere Marquette board and the Erie representatives remained. It appears that Perkins more than anyone else guided the Pere Mar-

quette through the reorganization following the receivership of December 4, 1905.

In discussing the matter of stock control after the first receivership consideration must be given to the reorganization which followed. This "reorganization" of December 11, 1907, was on paper only. The thing accomplished was release of the Pere Marquette from receivership without either foreclosure or a downward adjustment of capital liabilities. The means used as a pretext was merely the consolidation of the Pere Marquette of Michigan with its subsidiary, the Pere Marquette Railroad Company of Indiana. This subsidiary will be further considered, but note may be taken here that it was only 20 miles long; that its capital stock of $500,000 was owned by the parent company; that its bonds bore the guaranty of that company; and that it had been constructed, in effect, by the parent company to piece out the latter's line toward Chicago. In this consolidation the name "Pere Marquette Railroad Company" was retained; capital stock, including first and second preferred as well as common, was provided for to the amount of $28,500,000, equaling the authorized issues of the two constituents; their funded debt and other obligations were assumed; and last, but of great importance, $5,000,000 of 6 per cent five-year debenture bonds were authorized to take up current indebtedness, including receiver's certificates, and were offered to the stockholders.

Under the consolidation plan preferred shares of the Indiana company were to be exchanged for first preferred of the new company; preferred of the Michigan company for second preferred of the new company; common of both constituents for common of the new; all on a par for par basis. But to induce subscriptions to the debentures the following offer to stockholders of the Michigan company was made as a provision of the agreement of consolidation:

ARTICLE 7.

The shareholders of the Michigan company shall have also the following rights and privileges: Every holder of preferred shares of the Michigan company shall have the right to subscribe for debentures of the new company, described in article 10, to an amount equal to 50 per cent of the par value of the preferred shares owned by him at the date when this agreement shall be filed with the secretary of state of Michigan, after having been approved by the stockholders, such subscription and the payment thereof to be made at such times and upon such terms and conditions as the board of directors shall prescribe. Upon payment in full of such subscription (less such reduction, if any, as may be made as hereinafter provided), such preferred shareholder shall have the right to exchange his said preferred shares for first preferred shares of the new corporation, par for par, instead of exchanging the same for second preferred shares as provided in article 6, and upon payment of his subscription as aforesaid such preferred share-

holder shall have the further right to exchange for such first preferred stock, par for par, additional preferred shares of the Michigan company, acquired by him after the said date, up to an amount equal to 15 per cent of the par value of the said preferred shares owned by him at the date of filing this agreement as aforesaid.

Every holder of common shares of the Michigan company shall have the right to subscribe for such debentures to an amount equal to 20 per cent of the par value of the common shares owned by him at such date when this agreement shall be filed as aforesaid.

In case the total amount of debentures subscribed for under this paragraph shall exceed $5,000,000 of debentures, the board of directors shall be authorized ratably to reduce the said subscriptions until the total amount thereof shall equal $5,000,000.

No plan of consolidation is before us other than this. Furthermore, the joint petition of the Pere Marquette and the Pere Marquette of Indiana addressed to the Michigan Railroad Commission by F. W. Stevens, then general solicitor of both roads, who shortly thereafter became associated with J. P. Morgan & Company, in requesting the approval by that body of the articles of consolidation, specifically alleged:

The said articles prescribe * * * the numbers of shares of capital stock in the new corporation, the amount of each, the manner of converting the capital stock in each of said two corporations into such new corporation—all as required by said laws—and such other details as the undersigned companies deemed necessary to perfect such consolidation. It appears by the consolidation agreement, the aggregate amount of capital stock issued *and outstanding* of the two consolidating companies is $28,500,000, and the authorized capital stock of the new company is to be the same amount, $28,500,000, divided into first preferred shares and common shares, each of the par amount of $100, the relative amounts of stock of each class to be determined in accordance with the provisions of articles 6 and 7 of the consolidation agreement. (Italics ours.)

In connection with that petition the chairman of the Michigan Railroad Commission was also informed by the same official that—

There will be no increases of amount of stock and interests of public are clearly advanced as you will find.

and again to this effect:

By arrangement with the stockholders, those who contribute to the (debenture) loan will receive a somewhat better class of stock than they now hold. * * * The total capital stock is not increased.

The files of the Michigan Railroad Commission further show that that body, having ascertained that the consolidation proposed between the Pere Marquette Railroad Company and the Pere Marquette Railroad Company of Indiana would "be in accordance with the constitution and laws" of that state, approved the same on December 10, 1907.

But despite these assurances by the Pere Marquette an increase in the capital stock liability was then contemplated, since it appears from the accounts covering the exchanges of stock that such subscribers received a stock bonus with their debentures. It will be remembered that under the lease of the Pere Marquette to the C., H. & D., March 1, 1905, the latter had acquired title to 33,222½ treasury shares of Pere Marquette. These had been returned to the Pere Marquette through the so-called Harmon-Crapo arbitration of the differences between the two roads, as related elsewhere, and in anticipation of their use in reorganization of the Pere Marquette. It was out of this treasury stock that these bonuses were paid.

The bonus issues were made on the following basis:

1. Preferred-stock holders subscribed to debentures in the amount of $4,752,120, being 50 per cent of the par of 95,042.50 shares, and received as bonus 15 per cent of the latter, or 14,256.36 shares of new first preferred stock.

2. Common-stock holders subscribed to debentures in the amount of $247,880, being 20 per cent of the par of 12,394 shares, and received as bonus 20 per cent of the latter, or 2,478.80 shares of new common stock.

3. F. H. Prince & Company received as bonus on account of the reduction of subscriptions to the debentures 395 shares of new common stock.

In connection with the bonus paid to Prince & Company, attention is called to the provision in the agreement of consolidation set out above, that in case the debentures were oversubscribed the board of directors could ratably reduce the subscriptions. Just why under such circumstances Prince & Company should have received this $39,500 par value of stock does not appear. The Pere Marquette has no information on the subject beyond the fact as reported by the shareholders' protective committee, Nathaniel Thayer, William W. Crapo, Mark T. Cox, George H. Norman, and Francis B. Hart.

The result of these exchanges and bonus issues, together with fractional share adjustments, reduced the treasury stock as of January 1, 1908, to this:

First preferred, par	$240,000
Second preferred, par	62,020
Common, par	1,870,770
Total	2,172,790

Deducting this from the $28,500,000 of capital stock authorized left 131,637 shares as the minimum required for majority control. The C., H. & D., with its 110,000 shares, did not possess such a majority. Nor was a majority thereafter to be obtained by voting the remaining treasury shares therewith. But as a practical matter the 110,000 shares continued to suffice for voting control.

The first board of the reorganized company, elected August 12, 1907, was a Morgan board. No changes of consequence occurred in

its make-up until November 5, 1909, when certain representatives of the Baltimore & Ohio Railroad Company were elected, following the latter road's entrance into C., H. & D. affairs. But even then the Morgan interest was the dominant one in the Pere Marquette board. Early in 1911, when the C., H. & D.'s 110,000 shares were finally sold to J. P. Morgan & Company, the Baltimore & Ohio directors resigned.

A little more than a year later, on April 5, 1912, the road again went into the hands of receivers. On March 9, 1914, there was another extensive change, with more residents of Michigan on the board.

The capital stock account of the Pere Marquette as of June 30, 1914, was as follows:

	First preferred.	Second preferred.	Common.
In the hands of the public	$10,929,800.00	$968,180.00	$14,370,430.00
In the company's treasury	240,000.00	62,020.00	1,870,770.00
Total, first preferred	11,169,800.00	1,030,200.00	16,241,200.00
Second preferred	1,030,200.00		
Common	16,241,200.00		
	28,441,200.00		
Stock liability for conversion	58,800.00		
Total issues	28,500,000.00		

We turn now to a consideration of the management of the property by these successive controlling interests.

V. CRAPO-THAYER MANAGEMENT, 1900–1902.

The interests which directed the consolidation of January 1, 1900, continued in management of the Pere Marquette for three years, relinquishing their control to the Prince syndicate on December 29, 1902, only two days before the expiration of the fiscal year. That change in control and management was the important event in the history of the Pere Marquette during those three years.

No change occurred to affect the company's capital stock liability. New funded securities were issued to the amount of $5,855,000, and sold for cash with a net discount of $374,125. The company assumed at par value $1,000,000 of Saginaw, Tuscola & Huron Railroad Company 4 per cent bonds, and $998,000 of the 5 per cent bonds of the Marquette Equipment Company, Limited. Assumption of the first liability was incidental to the lease of the Saginaw, Tuscola & Huron to the Pere Marquette February 1, 1900. The second covered a Pere Marquette equipment trust. Retirements in these years were:

Bonds	$1,037,065.70
Equipment trust obligations	481,000.00
Chicago & West Michigan scrip	658,387.50
Total	2,176,453.20

On December 31, 1902, the liability for funded obligations, including the Chicago & West Michigan coupon scrip, was $31,067,337.43.

As against this increase in liabilities the principal asset acquired was a lease of the Saginaw, Tuscola & Huron, 64.38 miles, from Saginaw to Bad Axe, Mich. On October 1, 1900, the property of the Muskegon Lake Railroad Company, including its line of 1.25 miles, was formally deeded to the Pere Marquette, its stock having been acquired from the Chicago & West Michigan in the consolidation of 1900. The physical property of the Pere Marquette required and received attention immediately after the 1900 consolidation, and some betterments were made in 1900 and 1901. A heavier rail standard, 75 pounds, was adopted, and some 200 miles of new rail were laid by the end of 1901. New equipment, consisting of 67 locomotives, 18 passenger cars, 2,544 freight cars, 111 company cars, and 2 car ferries, aggregated $3,698,152.43.

From the income from operations during these three years all funded debt interest was regularly paid, and dividends on the 4 per cent preferred stock were paid at that rate, as follows:

In 1900, on the entire issue of $12,000,000, the dividends on the treasury stock, 14,911 shares, being transferred to "general improvement fund."

In the first six months of 1901, on the entire issue of $12,000,000, the dividends on the treasury stock, 14,899 shares, being transferred to "suspense account."

In the remaining 18 months to December 31, 1902, only on preferred stock in the hands of the public.

No dividends were paid on common stock under this management.

The entire surplus of 1900 and 1901, respectively, $166,189.56, and $161,628.44, and an even $200,000 of that for 1902, together with the dividends already mentioned, proceeds of land sales, and minor items, were credited to a "general improvement fund." The total credit thereto in these years was $675,630.87. Against this only $420,759.88 had been charged up to December 31, 1902, leaving a balance of $254,870.99 when the Prince syndicate took the road. Apparently, also, the Crapo-Thayer management included in operating expenses installment payments made on equipment trusts, aggregating $332,577.14 in the three years, and the annual reports to stockholders refer to other additions and betterments as charged to operation. Whether such items and the items charged into the general improvement fund were additions or betterments in fact is not determinable from existing accounts and records. Such information as is available challenges the accuracy of the classification in many instances.

The policies of this administration appear sound in the main. The operating management was a continuation of that of the constituent roads, and the property was well maintained. The surplus from operations, instead of being applied toward dividends on common stock, was set aside for further general improvements and conservation of the property.

VI. PRINCE SYNDICATE MANAGEMENT, 1903–1904.

As previously stated, when this syndicate assumed control a new management was installed. This management had a definite plan for expansion of the Pere Marquette into a through Chicago-Buffalo line. Indeed the syndicating negotiations of the promoters had been accompanied by other negotiations for lease of properties necessary to consummation of that plan. Manifestly debt expansion would have to precede property expansion. The new indebtedness was all funded, and no change was made in capital stock liability.

New fixed interest-bearing obligations put out or assumed by the Prince syndicate management during these 18 months were as follows:

	Par value.	Discount.
Sold for cash:		
P. M. consolidated 4 per cent bonds	$2,670,000.00	$365,250.00
P. M. Lake Erie division 4½ per cent bonds	3,000,000.00	105,000.00
Eastern Equipment Co. 5 per cent bonds	946,000.00	27,331.25
Issued for equipment:		
P. M. consolidated 4 per cent bonds	500,000.00	75,000.00
Eastern Equipment Co. 5s	2,000,000.00	None.
Haskell & Barker 5 per cent notes	561,633.33	None.
L. E. & D. R. Ry. Equipment 5s	112,000.00	None.
Pullman 5s	301,880.40	None.
Exchanged for securities:		
Steele roads stock—		
P. M. consolidated 4 per cent bonds	500,000.00	None.
Grand Rapids, Kalkaska & Southeastern R. R. stock—		
P. M. consolidated 4 per cent bonds	107,000.00	None.
Lake Erie & Detroit River Ry. stock—		
P. M. collateral trust 4s	2,870,000.00	None.
Assumed:		
Lake Erie & Detroit River Ry. Co. 5s (held in treasury)	3,000,000.00	....
Grand Rapids, Belding & Saginaw R. R. 5s	260,000.00	....
Grand Rapids, Kalkaska & Southeastern R. R. 5s	200,000.00	....
Pere Marquette R. R. Co. of Ind. 4s	675,000.00	....
Total	17,703,513.73	....

The only funded debt retirements during this administration were in the form of installments due on equipment trusts.

The larger part of this increase in debt was the direct result of the acquisition of new mileage and the purchase of more modern equipment in furtherance of the Prince expansion program.

The Pere Marquette purchased outright several small roads. The mileage thus added to the system was as follows:

Date of purchase.	Name of road.	Mileage.
May 6, 1903	South Haven & Eastern	33.96
Do	Milwaukee, Benton Harbor & Columbus	26.00
May 7, 1903	Benton Harbor, Coloma & Paw Paw Lake Train	2.74
May 6, 1903	Saginaw, Tuscola & Huron	65.79
Do	Sanilac	6.89
Dec. 21, 1903	Harbor Beach & Port Hope	7.80
May 6, 1903	Bay City Belt Line	6.25
Do	Grand Rapids, Belding & Saginaw	28.94
	Total	178.37

The first three were purchased from one Frederick M. Steele, and were known collectively as the "Steele roads." The Saginaw, Tuscola & Huron was purchased from the Jesse Hoyt estate and had been under lease to the Pere Marquette, as already said, since February 1, 1900. The Sanilac and the Harbor Beach & Port Hope were organized and constructed in the interest of the Pere Marquette, and the last two listed had come into its control when it acquired its constituents on January 1, 1900. The Pere Marquette mileage was further augmented during this period through affiliation and lease arrangements with these lines:

	Mileage.
Huron & Western	11.41
Grand Rapids, Kalkaska & Southeastern	40.73
Lake Erie & Detroit River	223.41
Pere Marquette of Indiana	20.70
Total	296.25

The prices paid for the properties purchased is shown by the table following:

Road and nature of consideration.	Amount.
Steele roads:	
P. M. consolidated 4 per cent bonds	$500,000.00
Cash	226,000.00
(Above paid for entire capital stock.)	
Commissions, interest, etc	6,099.32
Saginaw, Tuscola & Huron:	
S., T. & H. 4 per cent bonds assumed Feb. 1, 1900	1,000,000.00
S., T. & H. capital stock (1 share) purchased	50.00
Sanilac: P. M. cash advances for construction	59,175.37
Harbor Beach & Port Hope: P. M. cash advances for construction	77,100.80
Bay City belt line:	
P. M. cash advances, paid for in Bay City belt stock	96,500.00
P. M. cash payments for other Bay City belt stock	3,500.00
P. M. cash advances, other	25,104.53
Grand Rapids, Belding & Saginaw:	
G. R., B. & S. 5 per cent bonds assumed	260,000.00
G. R., B. & S. capital stock purchased	24,125.00
Total	2,277,655.02

The Steele roads were three branch lines connecting with the Pere Marquette in southwestern Michigan. No accounts or records of these roads have been located, and it is impossible to say what had really been spent in their construction and equipment. From other sources it appears that their operations began prior to 1875 and continued with varying results until 1897, dividends of $3,400 having been paid in 1885 and 1886. After 1897 these roads uniformly failed to earn operating expenses, taxes, and interest, the yearly deficits in income being:

1898	$13,166.93
1899	14,638.30
1900	8,541.24
1901	15,866.31
1902	6,305.58

At the end of 1902 the consolidated result of all income and profit and loss transactions since the beginning was a deficit of $14,900.54. The price paid was for the entire capital stocks of these roads, there being no bonds, and figured $11,676 per mile. On the basis of the 4 per cent bonds issued in part payment, the transaction meant a fixed charge against the Pere Marquette annually of almost $30,000.

It has already been recited how the Saginaw, Tuscola & Huron was leased by the Pere Marquette and its bonds assumed on February 1, 1900. The supplementary transaction of purchase during this period seems to have been accomplished by the acquisition of one share of its stock. From the records available it appears that its construction and equipment cost was $1,003,090.83, although this can not be verified. Since 1882, its first year of operation, this road had never succeeded in earning its operating expenses, taxes, and interest charges. When operation was taken over by the Pere Marquette under perpetual lease, February 1, 1900, the accrued deficit was $718,736.03, but the Pere Marquette required that it be handed over free from all floating debts, and this was done. During the six years preceding its lease as a whole this road's operating income contributed not a cent to the annual bond interest charge of $40,000. At the price taken over its cost to the Pere Marquette was about $15,200 per mile. Lack of necessary accounts and records for the other roads purchased makes an analysis of their early history impossible.

These acquisitions were effected by deeds of conveyance shortly after the Prince syndicate took hold of the Pere Marquette, although all except the Steele roads had been under Pere Marquette control and management for some years before. According to the minutes of the board meeting which authorized the conveyances, on March 20, 1903, "it seemed inadvisable to maintain separately the corporate existence of the aforesaid companies." Further than this the record does not go.

Passing now to a consideration of the roads "affiliated," it appears that for the Huron & Western, which ran west from Bay City principally to serve a coal mine, the Pere Marquette paid $106,559.29 to the Grand Trunk Railway system, which seemingly had built it at that cost. At the same time the stock came into the possession of the Pere Marquette, and since 1903 the road has been operated as a part thereof. At the price paid this property cost about $9,340 per mile.

No accounts of the Grand Rapids, Kalkaska & Southeastern can be found. This line ran from Rapid City, Mich., in a generally southeastern direction, to Stratford, Mich. It was built to connect a timber tract of the Thayer Lumber Company, located in Missaukee county, with the Chicago & West Michigan. This latter road, by contract, agreed to oversee the construction, furnish the necessary rolling stock, and lease and operate the road for 10 years following its completion, paying as rental $20,000 per annum plus 15 per cent of gross receipts except upon pine.

Its minute books show that the Kalkaska road was to be constructed by William Alden Smith, under a contract dated October 21, 1897, by which the constructor was to receive as payment $200,000 in bonds and $264,000 in stock, less such as had been subscribed by him. According to the state railroad commissioner's reports the entire sum of $464,000 was treated by that carrier as cost of road and equipment.

In 1903, a few years prior to the expiration date of the lease, the Pere Marquette, through a contract with George A. Fernald and others, purchased the entire capital stock of the Kalkaska road for $107,000, payable in Pere Marquette consolidated 4 per cent bonds, and assumed its $142,000 of first mortgage 5 per cent bonds then remaining outstanding. The result was a standing minimum fixed charge against the Pere Marquette of $11,380 annually for what was originally a tap line and undoubtedly diminishing in value as the timber was being cut out. Speaking of this branch in May, 1915, the chief operating officer of the Pere Marquette said:

It is bad. There are 14 miles of the track from Eastman Junction to the end at Stratford that is so bad that we operate it under caution, and I am about to ask the railroad commission for the authority to take it up. There is no business on the branch to warrant our continuing in operation, and we are now going up there twice a week to bring out what little business there is.

The acquisition of the Lake Erie & Detroit River Railway Company was the result of negotiations between F. H. Prince, representing F. H. Prince & Company, and F. H. Walker, representing Walker Sons, of Walkerville, Ontario, which seemingly culminated on August 20, 1902, and were summarized in an exchange of letters

on that day. Walker had offered this property to the Crapo-Thayer management for $6,000,000 as far back as February, 1902, but the offer had been declined. This arrangement of August 20, 1902, was before the Prince syndicate had secured its written options on Pere Marquette stock from Nathaniel Thayer and others (see *ante*, p. 24), and after those options had been secured a more formal contract was entered into between F. H. Prince & Company and Walker Sons, dated September 17, 1902.

Briefly, Walker Sons, owning the entire capital stock, 14,000 shares of $1,400,000 par value, of the Lake Erie & Detroit River, offered to sell the same to F. H. Prince & Company at $205 per share, payable in Pere Marquette 4 per cent 20-year collateral trust gold bonds at par in an aggregate of $2,870,000, bearing interest at 3 per cent for the first two and one-half years and 4 per cent thereafter. The road was to be free from floating debt when the contract should be finally consummated. Prince accepted upon the understanding that, if Thayer should not carry out his understanding with Prince to sell Thayer's large Pere Marquette holdings, Prince should not be liable for failing to deliver the Pere Marquette bonds. The letters of August 20, 1902, went no further, but the contract of September 17, 1902, provided that the National Trust Company, Limited, of Toronto, Ontario, should be trustee under the indenture securing the $2,870,000 of bonds, and that the agreement should be carried out with the Pere Marquette as purchaser. Prince had meantime secured his written options on 100,000 shares of Pere Marquette stock from Thayer and others. See *ante*, page 24.

It was also in the more formal agreement of September 17, 1902, that the bonds of the Lake Erie & Detroit River were first mentioned in the documentary records. Of these bonds there had been issued $3,000,000 dated August 1, 1902, and bearing interest at 5 per cent per annum for their entire term of 30 years. The National Trust Company, Limited, of Toronto, Ontario, was trustee under the mortgage. Evidently those bonds had not been marketed, certainly not beyond Walker Sons, else section 6 of that contract could hardly have permitted "certain changes with respect thereto." Those changes, it should be noted, were to be made only "provided that the total charge is not increased thereby or the security of the said 14,000 shares of stock impaired."

On December 3, 1902, and thus prior to exercise by Prince on December 5, 1902, of his option, the executive committee assumed for the Pere Marquette his contract of September 17, 1902, to buy the Lake Erie & Detroit River stock. Then the board, on December 15, 1902, approved the action of the executive committee and called a stockholders' meeting for January 20, 1903, to ratify that stock pur-

chase. Before that meeting, and, in fact, immediately upon its reorganization in the syndicate interest on December 29, 1902, the board of directors had approved the form of the bond to be issued for the Lake Erie & Detroit River stock. When the stockholders met on January 20, 1903, in Detroit, Prince, Erb, and Cox, with Myron J. Carpenter, the then recently elected vice president and general manager of the company, were the only persons in attendance. That meeting ratified and approved the previous action of the executive committee and board of directors with respect to the purchase of the Lake Erie & Detroit River stock, and further specifically authorized the issue of $2,870,000 of collateral trust 20-year 4 per cent gold bonds under an indenture whereby the shares acquired should be assigned to the National Trust Company, Limited, of Toronto, as trustee. These bonds were dated January 1, 1903, were issued in February, 1903, and were offset on the books by an asset account of $2,870,000 styled "Lake Erie & Detroit River Railway, stock owned."

There still remained to be carried out the provision of the Prince-Walker agreement as to purchase of $3,000,000 bonds of the Lake Erie & Detroit River at 103½. The Pere Marquette directors in special meeting on June 9, 1903, syndicate interests only being represented, voted:

That this company accept from Messrs. F. H. Prince & Company an assignment of the contract dated September 17, 1902, between Messrs. F. H. Prince & Company, the Canadian Bank of Commerce, and the Dominion Securities Company for the purchase of $3,000,000 5 per cent first mortgage gold bonds of the Lake Erie & Detroit River Railway Company and that this company assume all rights and obligations of said F. H. Prince & Company under the said contract and relieve said F. H. Prince & Company of all obligations in respect thereof.

The minutes recited that F. H. Prince & Company in making that agreement had acted in the interest of the Pere Marquette, and would assign the same without commission or other charge.

To accomplish this undertaking the Pere Marquette issued $3,000,000 of its own 4½ per cent 30-year gold bonds, N. W. Harris & Company and Robert Winthrop & Company having theretofore agreed to purchase the same at a price of 96½, or to purchase 5 per cent bonds at 103½. The board and executive committee determined upon the 4½ per cent rate because "a great saving will accrue to the company if bonds bearing 4½ per cent interest per annum be issued instead of those bearing 5 per cent." The Pere Marquette was not at that time issuing other bonds at an interest rate exceeding 4 per cent. These new 4½ per cent bonds are the so-called Lake Erie division bonds, and had pledged as security thereunder the Lake Erie & Detroit River Railway Company bonds which had been guaranteed,

principal and interest, by the Pere Marquette. All this was ratified and approved by the stockholders on July 15, 1903.

To complete the arrangements the Lake Erie & Detroit River, by contract as of October 1, 1903, but made December 17, 1903, when Pere Marquette appointees were in office, granted to the Pere Marquette exclusive operating rights over the Canadian lines. The prime consideration for this was:

1. The payment of the interest on the $3,000,000 bonds of the Lake Erie & Detroit River, and all other fixed charges and operating expenses.

2. The setting apart out of the earnings of the Lake Erie & Detroit River as conducted by the Pere Marquette, of the amount of interest on the $2,870,000 bonds given in payment of the Lake Erie & Detroit River stock, being a sum to equal a dividend of 6.15 per cent on the capital stock until June 30, 1905, and a dividend of 8.20 per cent thereafter.

The Pere Marquette's Canadian mileage is supplemented east of St. Thomas by the trackage rights over the Michigan Central, used for freight only, to the Niagara frontier. The operations over all these Canadian lines are accounted for as a part of the system, but an allocation of revenues and expenses on formulæ of the Pere Marquette officials convinces them that those lines pay their own way. Their bond interest was paid upon court orders during the recent receivership, as it was in the former. Whether it is actually earned by those lines is a matter of controversy between Canadian and American bondholders of the system.

The accounts of the Lake Erie & Detroit River as written into the books of the Pere Marquette showed as cost of road, with final adjustments, $4,659,891, offsetting liabilities being:

Lake Erie & Detroit River capital stock	$1,400,000
Lake Erie & Detroit River first mortgage 5 per cent bonds	3,000,000
Lake Erie & Detroit River equipment 5 per cent bonds	112,000
Lake Erie & Detroit River current liabilities, net	147,891

The books of the Lake Erie & Detroit River are neither adequate nor sufficiently continuous to permit an analysis of the cost of road asset. The road's income and profit and loss transactions beginning prior to January 1, 1892, and including the business of the London & Port Stanley Railway, resulted in an accumulated surplus of $193,468.13 at the end of 1901. In 1902 there were extraordinary charges made to both income and profit and loss, including $13,856 paid in dividends, and these left the road on December 31, 1902, with a deficit of $13,955.57. Those dividends, according to the records available, were the first ever paid. In 1903, under Pere Marquette control as shown above, gross revenues increased from the $640,018.92 of 1901 to $968,875.26, practically 50 per cent, whereas expenses increased less than 30 per cent. The result permitted pay-

ment of the bond interest of $150,000 and stock dividends of $86,100, all according to contract, it will be observed, and left a surplus of $12,003.51.

In pursuance of the same object, the expansion of the Pere Marquette into a Chicago-Buffalo through line, there came in 1903 the extension toward Chicago, in the name of the Pere Marquette Railroad Company of Indiana. This company was incorporated in the interest of the Pere Marquette of Michigan March 9, 1903, because the latter had no power to condemn land under the laws of Indiana. It was expected to build as far west as Hammond, Ind., within the Chicago switching limits, a total distance of about 46 miles. About the same time there was also organized the Marquette Construction Company, a New Jersey corporation controlled by the Prince syndicate, or certain members thereof.

On May 12, 1903, the construction company and the Pere Marquette of Indiana entered into a contract covering the construction and equipment of the section of 22 miles from New Buffalo, Mich., to Porter, Ind. This was an "exhaustive contract," in the language of a Pere Marquette official of that day, under which the construction company was required to turn over to the Pere Marquette of Indiana a completed railroad and the equipment necessary to its proper operation, the consideration to be "the total capital stock of the railroad company amounting at par to $500,000 full paid and nonassessable," to be delivered upon the execution of the contract, and "an amount at par equal to $25,000 per mile of single-track line or $35,000 per mile of double-track line, exclusive of switches and sidings," of the railroad's 4 per cent first mortgage bonds. For these securities the road was to be fully constructed and completed by the construction company and conveyed to the railroad company free of liens and encumbrances. The bond grant per mile was the limit authorized by the railroad company's first mortgage. The contract also provided that before delivery of the bonds the construction company should procure the guaranty of both principal and interest thereof by the Pere Marquette. This provision had been anticipated, for on March 20, 1903, when the directors of the Pere Marquette had authorized the construction in Indiana, they resolved that—

The said construction company shall transfer to this company all the shares of the capital stock of the Pere Marquette Railroad Company of Indiana in consideration of the guaranty by this company of the principal and interest of the first mortage 4 per cent 30-year gold bonds of the said railroad company.

This arrangement was effectuated on May 15, 1903, only three days after the construction contract was entered into, by a formal assignment from the construction company of the entire capital stock of the Indiana company to the Pere Marquette and an agreement by

the latter to indorse its guaranty on the bonds as had been contemplated.

It very clearly appears that the construction company deemed that the details of its accounts and records were of no concern to the Pere Marquette, because under its "exhaustive contract," the construction company's obligation was merely to turn over the completed railroad for the securities. The Pere Marquette, therefore, could not produce those accounts and records, and the opening accounts of the Pere Marquette of Indiana were in fact written up several years after the transactions had occurred.

The construction in Indiana was 20.7 miles of single track, for which, under the contract and according to the certificate of the engineer of the Pere Marquette, bonds should have been issued at the rate of $25,000 per mile to the amount of $517,500. Bonds were issued for $575,000, but why can not be said on the state of the record. Subsequently an additional $100,000 of bonds were issued to Newman Erb, for and on account of the construction company, and in order to pay for and provide the Chicago terminals, not specified in the construction contract. Of the $85,000 realized from these bonds, $40,842.10 was expended on the terminals, mainly for real estate and the balance, with interest, $45,178.52, was turned back to the railroad. All these were the 4 per cent first mortgage bonds of the Pere Marquette of Indiana, guaranteed by the parent Pere Marquette. On the first $575,000 the discount amounted to $108,866.21, as reported by the construction company, or about 18 per cent. That same year the Pere Marquette's 4 per cent consolidated mortgage bonds sold at 92½ in March and April, and at 85 thereafter, and the last $100,000 of bonds of the Indiana company, those turned over to Newman Erb, also brought 85.

In its work on the Indiana section the gross expenditures by the construction company were $465,199.18, and it turned back to the Pere Marquette of Indiana an unexpended balance of $934.61. But of those total expenditures almost $300,000 was for work done by the parent Pere Marquette itself, while substantially $130,000 more was paid to one contractor, apparently for grading and surfacing. An even $20,000 of the remainder was paid for the private car "Grand Rapids," that being, so far as can be ascertained, the only expenditure under and in satisfaction of the provision of the construction contract which required the construction company with the approval of the railroad to "purchase and provide such equipment as may be necessary to the proper operation of said line," to the extent of $1,000 per mile constructed.

It was far from a "completed railroad" which the construction company turned over to the Pere Marquette of Indiana. That is

evidenced by the fact that the parent company, beginning in May, 1904, with $180,733.59, spent in all $240,109.69 for work on its subsidiary line, including the Chicago terminals. This was partially paid by the cash balances unexpended of the bond issues to the construction company; the remainder, $193,996.56, was carried as due the Michigan company.

The Pere Marquette of Indiana treated its issue of $675,000 in bonds and $500,000 in stock as its cost of road. In fact, the construction cost on the face value of all the records which can be located was only $734,931.81. The parent Pere Marquette, because it assumed as its own liability the $675,000 of bonds of the Indiana company which it had guaranteed, wrote up the same as its "Pere Marquette Railroad of Indiana, cost of road." Its $500,000 par value of the Indiana company's capital stock was carried at a value of $193,995.56, which was the balance remaining due to it for advances for construction of the Indiana line.

This Indiana mileage the Michigan corporation treated as "leased" from its completion until the two roads were consolidated in 1907.

Operation into Chicago began about January 1, 1904, the distance west of Porter being covered by trackage rights for 17.94 miles over the Lake Shore & Michigan Southern Railway to Pine, Ind., and for 34.20 miles over the Chicago Terminal Transfer Railroad, from Pine to the Grand Central station in Chicago.

Due to the work of its predecessors, the road when the Prince management took hold was in a condition good enough to run along for a year or two with scant attention and without any extraordinary betterment work. The new management took advantage of this, and it seems to have reversed the maintenance and betterment policy of the Crapo-Thayer management. In this connection it is to be kept in mind that the Prince management were appointees of a syndicate holding a large investment in the road's common stock, which had never paid a dividend. That syndication, to be sure, effected a control of the road, but control alone could not, quite evidently, have given to the stock any value much greater than the $85 per share at which it had been syndicated. Something more was needed to justify a sale price which would return any great profit to the promoters. Their aim was to put the common stock in the list of dividend payers, and this they accomplished in the manner shown below. Even then additional justification was apparently considered necessary for the sake of the record in the sale of the stock to the C., H. & D. at $125 per share on July 7, 1904, as is evident from the insertion in the C., H. & D. board minutes of the Odell "recommendation." See *post*, page 104.

Large increases accrued in the capital investment accounts during the Prince régime, being up to June 30, 1904, as follows:

Investment in road and equipment	$8, 663, 888. 48
Investments in affiliated companies	12, 549, 378. 22
Investments, all other	59, 151. 00
Total	21, 272, 417. 70

Representative of this total are the following items:

Mileage acquired in United States	$1, 105, 398. 68
Mileage control in United States	253, 211. 47
Mileage control in Canada	10, 529, 891. 00
Additions and betterments, net	370, 631. 79
General improvement fund, net	154, 126. 10
New equipment	6, 269, 328. 36
Stocks of other companies	214, 251. 00
Advances to affiliated companies, net	922, 755. 28
Miscellaneous property in Canada	55, 321. 19
Pere Marquette R. R. of Indiana bonds assumed	675, 000. 00
Grand Rapids, Kalkaska & Southeastern bonds held by trustee	58, 000. 00
Miscellaneous items	102, 800. 33
Discount, etc., on securities	561, 702. 50
Total	21, 272, 417. 70

The mileage acquisitions have already been detailed. It should be said that in the figures above there are included as part of the cost of such acquisitions, minor items other than the straight cost. As to the Canadian lines the Pere Marquette books carry as assets (1) the Lake Erie & Detroit River stock purchased and held in trust at a value of $2,870,000; (2) the Lake Erie & Detroit River bonds, par value $3,000,000, purchased and pledged; and (3) the book cost of the Canadian lines, transferred from the Lake Erie & Detroit River books, and included above at $4,659,891. This latter item, on the face of the contracts governing the acquisition of those lines is, of course, a duplication which the company does not include in its annual reports to this Commission.

It has already been said that the Prince people inherited from their predecessors a "general improvement fund" credit of $254,-870.99. They added thereto nothing whatever from current income, but from other sources increased it to $278,530.95, and at the same time charged against it work amounting to $432,657.05, creating a balance to be subsequently financed of $154,126.10 on June 30, 1904. It will be noted that there was very little of other additions and betterments, even on the face of the accounts and records. Nor does it appear that any betterments were included in operating expenses during these 18 months.

New equipment was of course necessary for effective entry by the Pere Marquette into the group of through Chicago-Niagara frontier

lines. For such nearly $4,500,000 of the security issues of this management were put out, and these were supplemented in most of the equipment purchase contracts by cash payments which bring the total expenditures for new equipment up to over $6,000,000. The equipment acquired was the following:

Locomotives	65
Passenger service cars	30
Box cars	6,150
Coal cars	900
Stock cars	250
Cabooses	32
Wrecking crane	1
Car ferries	2
Transfer boat	1

The income and operating expense accounts of these 18 months up to June 30, 1904, must be considered in the light of the increased mileage and equipment over those of December 31, 1902; and in view of the fact that the operations of the Canadian lines were not thrown into the operating accounts of the Pere Marquette until January 1, 1904. Operations at that time extended only to St. Thomas, Ontario.

These income and operating expense accounts were deliberately manipulated and distorted, as will be shown below, but even as they stand in the books of the company they evidence quite clearly that ordinary maintenance was deferred by the Prince management. This appears from the following comparison of its operations with those of the previous and the succeeding years, and it may be explained that in July, 1904, the Canadian operations were extended by trackage rights to the Niagara frontier.

Item.	Calendar year 1902.			Calendar year 1903.		
	Amount or number.	Ratio to total operating revenues.	Ratio to total operating expenses.	Amount or number.	Ratio to total operating revenues.	Ratio to total operating expenses.
		Per cent.	*Per cent.*		*Per cent.*	*Per cent.*
Operating revenues	$9,955,375.07			$10,387,560.37		
Maintenance of way and structures	1,480,422.42	14.87	21.71	1,143,687.61	11.01	17.20
Maintenance of equipment	1,040,473.87	10.45	15.26	933,539.19	8.99	14.04
Transportation expenses	4,066,109.43	40.84	59.65	4,302,315.52	41.41	64.69
General expenses	230,474.03	2.32	3.38	270,777.20	2.61	4.07
Total operating expenses	6,817,479.75	68.48	100.00	6,650,319.52	64.02	100.00
Miles operated at close of period—single track	1,828.27			[1]1,983.59		
Locomotives operated at close of period	266			338		
Passenger cars operated at close of period	280			331		
Freight cars operated at close of period	9,509			14,518		
Company cars operated at close of period	257			311		

Item.	Six months to June 30, 1904.			Fiscal year to June 30, 1905.		
	Amount or number.	Ratio to total operating revenues.	Ratio to total operating expenses.	Amount or number.	Ratio to total operating revenues.	Ratio to total operating expenses.
		Per cent.	*Per cent.*		*Per cent.*	*Per cent.*
Operating revenues	$5,456,935.00			$12,667,420.34		
Maintenance of way and structures	502,006.49	9.20	12.91	1,715,231.99	13.54	17.79
Maintenance of equipment	560,357.16	10.27	14.41	1,547,547.84	12.22	16.05
Transportation expenses	2,676,218.97	49.04	68.84	5,996,491.55	47.34	62.20
General expenses	149,216.95	2.73	3.84	381,404.75	3.01	3.96
Total operating expenses	3,887,799.57	71.24	100.00	9,640,676.13	76.11	100.00
Miles operated at close of period—single track	2,211.65			2,397.74		
Locomotives operated at close of period	380			399		
Passenger cars operated at close of period	340			359		
Freight cars operated at close of period	15,412			17,376		
Company cars operated at close of period	316			406		

[1] Canadian mileage not included.

Work on roadway and track generally, and maintenance of bridges, ties, and rails all diminished greatly. No new rail work whatever appears in the 18 months' total of operating expenses, although the report to stockholders states that 52.9 miles of 75-pound rail were laid in 1903 and charged as roadway and track expense. No such rail laying is shown in the road's rail records as set forth on page 66 herein. What was true of the road and structures was true also of the equipment, as is especially apparent in the light of the great increases in rolling stock then put into operation. In the two maintenance items, covering road and equipment, the reduction in 1903 was $443,669.49, and in the following six months it was on the basis of $396,168.99 for one year. This, it will be noted, despite the inclusion of the operations for the lines in Canada in 1904. Contemporaneously during these same 18 months gross revenues increased, and the other operating expenses, transportation and general, all increased. Among the general expenses salaries of general officers jumped over 30 per cent in 1903 and almost 60 per cent to June 30, 1904.

The first of the income account manipulations was designed to remove from the operating expenses of 1903 extraordinary charges resulting from a wreck at East Paris, Mich. It was accomplished by creating out of surplus a fund to care for the wreck expenses. The surplus account, it may be mentioned, included a balance from the previous year of $213,477.09, another inheritance, as it were. In the months January–June, 1904, there were other manipulations of the income and expense accounts, the usual method being to bury

legitimate charges in "suspense" items, or put them through profit and loss direct, avoiding their inclusion in operating expenses.

It clearly appears from the "authorities" which a seemingly conscientious accounting official caused to be attached to the entries that the instructions emanated from the syndicate head and president of the road, Prince, in Boston, and reached the auditor through Carpenter, the vice president, in Detroit. The latter's correspondence speaks, in January, 1904, of—

* * * $40,000, which I have been carrying as a nest egg, fearing bad results in December and January.

This, of course, can not come in as an earning, but will probably be very useful in figuring out our net results for these months.

The next month a Prince telegram to Carpenter stated:

For certain reasons I wish to have the deficit for January appear under one hundred thousand, so suggest you make a credit of thirty-odd thousand so as to make the deficit appear under one hundred thousand.

The same day, February 23, 1904, Carpenter instructed the auditor to "use one-half the $40,000 unless otherwise advised." There followed a reduction of $20,000 in "repairs locomotives" and "repairs freight cars," that amount being charged to "suspense material," an open account.

Later in connection with this same six months' period, Carpenter gave instructions as to reporting tie expenses in this wise:

Charge same amount as was charged last year, adding thereto about the same per cent of increase as our earnings increase.

About May, 1904, Carpenter advised the auditor regarding $28,000 which had previously been eliminated from roadway repairs:

Please bring this to my attention from month to month and we will see how we can best dispose of it. I think I shall have to depend upon you to keep the earnings up in order that we may dispose of it quickly.

Whatever the method used, the ultimate aim and the invariable ultimate result was an unjustifiable increase in the ultimate income balance. For these 18 months that unjustifiable increase by such methods was $716,380.19.

The initial common-stock dividend was paid August 31, 1903, at the rate of 1 per cent; the second, at the same rate, came on December 31, 1903; the last under the Prince management was in March, 1904, also 1 per cent. The manipulations of operating expense accounts, it will be noted, followed close upon the December, 1903, dividend payment.

The result of these extraordinary efforts produced in 1903 an apparent net income of $1,604,674.71. Of this the dividends consumed $703,542. But in the following six months' period the net was only

$155,743.32, and the dividend disbursements were $351,847. In the 18 months the total net was $1,760,418.03; if the manipulations are considered it was only $1,044,037.84. This, it must be remembered, was the result even under a policy of deferring maintenance. The dividends paid were $630,432 on preferred, and $424,957 on the common, the total, $1,055,389. Even what on the face of the accounts was a good year, 1903, with $1,604,674.71 final net income, greater by over $600,000 than in any previous year, was not, in truth, as successful as was 1902, when the increased mileage and equipment, the deferment of maintenance, the manipulations, and the other necessary appropriations of net income are considered.

Thus it appears, even without allowing for charges other than dividends against the net income, that the common-stock dividends of the Prince management were never in fact earned, but were secured at the expense of proper maintenance. For it can not be forgotten that while well-maintained railroads can, if decrease in business and consequent reductions in revenues demand, retrench on maintenance and reduce that item for a short period, it has to be made up in the end.

The last common-stock dividend of this management, in March, 1904, was declared at about the time when the Prince interests were maneuvering to unload their Pere Marquette stock on the C., H. & D. at $125 per share. Looking to that end these dividend payments were required as a price justification.

VII. ZIMMERMAN-HOLLINS MANAGEMENT, 1904–1905.

The transfer of Pere Marquette management from the Prince syndicate to a C., H. & D. stock syndicate followed upon Prince's sale to the C., H. & D., on July 7, 1904, of 110,000 shares of Pere Marquette common stock at $125 per share. That sale was the result of the operations of the C., H. & D. stock syndicate formed May 19, 1904, and participated in to a considerable extent by members of the Prince syndicate. Among the other participants was Eugene Zimmerman. The C., H. & D. stock syndicate as first constituted was succeeded in its control of both roads, on August 16, 1904, by the Zimmerman-Hollins combination of interests, resulting from the entrance of H. B. Hollins & Company into C., H. & D. affairs to accomplish the retirement of the latter road's 5 per cent preferred stock. As Zimmerman and other C., H. & D. syndicate members continued on in the Zimmerman-Hollins control, it seems proper that this entire period should be considered as one in the history of both roads.

The many details of the events of these 15 months center in the C., H. & D. and are set out at length in the history of that road

herein. So far as the transactions affected the Pere Marquette, a résumé is presented here.

1. The C., H. & D. stock syndicate was formed under an agreement of May 19, 1904, members of the Prince syndicate being among its promoters and subscribing thereto to a considerable extent. Pledges made by the C., H. & D. syndicate promoters and affecting the Pere Marquette, were the following:

(a) C., H. & D. should purchase control of the Pere Marquette at $125 per share.

(b) C., H. & D. and Pere Marquette should jointly and severally guarantee the $3,500,000 par value bonds of the Toledo Railway & Terminal Company, and $150,000 par value bonds of the Toledo Riverside Railway Company and enter into a joint and several agreement for the use of the terminal facilities thereof at Toledo, Ohio.

(c) C., H. & D. and Pere Marquette should enter into a preferential interchange agreement by which the C., H. & D. was also to be given an option to lease the Pere Marquette.

(d) Express privileges on the Pere Marquette should be transferred to the United States Express Company, a C., H. & D. syndicate subscriber.

(e) C., H. & D. and Pere Marquette should jointly purchase the $4,206,000 par value stock of the Chicago, Cincinnati & Louisville Railroad Company by issuing joint bonds for $3,500,000, the C., C. & L. stock being held by subscribers to the C., H. & D. syndicate, and also guarantee C., C. & L. bond interest payments.

(f) C., H. & D. and Pere Marquette should purchase car equipment from the American Car & Foundry Company, a subscriber to the C., H. & D. syndicate, and represented in the Prince syndicate.

(g) C., H. & D. and Pere Marquette should purchase locomotives from the American Locomotive Company, a subscriber to the C., H. & D. syndicate.

(h) C., H. & D. and Pere Marquette should purchase air-brake equipment from the New York Air Brake Company, a subscriber to the C., H. & D. syndicate.

2. The C., H. & D. board was reörganized, control passing to the syndicate July 7, 1904, and 110,000 shares Pere Marquette common stock was purchased by C., H. & D. from Prince & Company, at $125 per share. Other pledges of the promoters carried out at same or subsequent meetings.

3. Pere Marquette 4 per cent refunding mortgage bonds were issued to the amount of $9,207,000 and negotiated through the C., H. & D., which indorsed them, following which all but $649,000 were sold through syndicates dominated by the Hollins-Zimmerman interests.

4. The Pere Marquette was leased to the C., H. & D. March 1, 1905, and as an incident of that lease the latter road acquired title to all Pere Marquette treasury stock.

5. Entire $3,500,000 par value of practically worthless stock of the Toledo Railway & Terminal Company was bought by Hollins & Company from the promoters of that road, who were subscribers to the C., H. & D. syndicate, at $41 per share, sold to the C., H. & D. at $42 and by it sold to the Pere Marquette at $47, as one transaction.

6. Control of water-front properties of the Toledo Railway & Terminal Company at Toledo were fraudulently transferred through the Great Central Dock Company to the Detroit, Toledo & Ironton Railroad Company, in which the Hollins-Zimmerman combination had secured a controlling interest.

7. Hollins control of C., H. & D. was purchased by Morgan & Company for Erie Railroad Company, which temporarily took control of the Pere Marquette.

The Pere Marquette control and management passed from the Zimmerman-Hollins interests to the Erie Railroad Company October 20, 1905, and when the Erie rescinded its purchase of the C., H. & D. stock, which carried the Pere Marquette control with it, both the two latter roads went into receivership on December 4, 1905. It is impracticable now to make a balance sheet presentation of the Pere Marquette's condition on either date, but that condition can be adequately set forth as of June 30, 1905, and due allowance made for subsequent transactions. The Erie management attempted no capital financing, and that of the Zimmerman-Hollins people after June 30, 1905, was a minor continuation of what was then under way.

No new liability was written up as the result of the transfer to the C., H. & D., incident to its lease of the Pere Marquette March 1, 1905, of the latter's 33,222½ shares of treasury stock. That stock at that time was already carried as outstanding because of the circumstances attending its original issue at the time of the road's organization in 1900. See *ante*, page 21, et seq.

Of funded securities the new issues written up from July 1, 1904, until the beginning of the first receivership were as follows:

Description of issue.	July 1, 1904, to June 30, 1905.		July 1, 1905, to Dec. 4 1905.	
	Par value.	Discount.	Par value.	Discount.
Eastern Equipment Co. 5 per cent equipment notes.	$255,000	$11,112.60	....	....
Robert Winthrop & Co. 4½ per cent equipment notes.	1,520,000	None.	....	....
P. M. refunding mortgage 4s..........................	8,361,000	1,092,345.00	$846,000	$122,177.50
Total..	10,136,000	1,103,457.60	846,000	122,177.50

It is to be observed that no entries were ever made in the accounts of the Pere Marquette in connection with the purchase of the capital stock of the Chicago, Cincinnati & Louisville Railroad Company. The details of that transaction are primarily an incident of the operations of the C., H. & D. stock syndicate, and will be found in the C., H. & D. section of this report. But though its accounts are bare the records of the Pere Marquette show quite fully the participation of its management in that transaction.

The original Chicago, Cincinnati & Louisville stock purchase contract of July 1, 1904, was signed on behalf of the Pere Marquette by Newman Erb, vice president, and thereunder the road bound itself to purchase the entire $4,206,000 capital stock of the Chicago, Cincinnati & Louisville for $3,500,000 in Pere Marquette 4 per cent gold bonds, and to reserve the $500,000 remaining of that issue for betterment of the road purchased. The Pere Marquette also guaran-

teed prompt payment of the interest on the $6,600,000 bonded indebtedness of the Chicago, Cincinnati & Louisville. This contract was approved and the bond issue authorized by the board on June 28, 1904, the directors present being George H. Norman, Guy Norman, Nathaniel Thayer, Frederick H. Prince, Maxwell Norman, Mark T. Cox, and Charles Merriam, with Bradley W. Palmer of counsel. The stockholders' unanimous approval was voted the next day, June 29, 1904, at a meeting where only Pere Marquette subordinate officers and employees were present, and of which the minutes recite:

In the absence of the chairman, president, and all the vice presidents, the meeting was called to order by Mr. J. E. Howard, and Mr. George F. Weidman was selected as chairman.

Howard was the general auditor of the Pere Marquette, and the road's annual report for 1904 shows George F. Weidman as its superintendent of telegraph. As George H. Norman, chairman, Prince, president, Erb, first vice president, and Cox, second vice president, were members of one or the other or both of the two syndicates, the Prince syndicate and the C., H. & D. stock syndicate, involved in putting the deal through, and as Carpenter, the only remaining vice president, was the operating manager of the road and the nominee of the Prince syndicate, the foregoing recital in the minutes is significant and would seem to have been inserted with design. At this meeting the treasury stock, except 9½ shares, was voted in favor of the purchase of the capital stock of the Chicago, Cincinnati & Louisville by Howard as substitute proxy for Carpenter under instructions from the general solicitor, Frederick W. Stevens. Stevens acted on the authority of George H. Norman, chairman of the Pere Marquette board, a member of the C., H. & D. syndicate, and a relative of Prince. That treasury stock was not necessary to a majority.

The Pere Marquette records also evidence the subsequent purchase by the C., H. & D. of a one-half interest in the Chicago, Cincinnati & Louisville stock, and the arrangement for the issue of joint and several bonds of both purchasers in payment. It further appears that the Pere Marquette actually issued its bonds as agreed, and one of the first acts of the management installed by the Erie was to safeguard the Pere Marquette from the results of such issue. This action culminated in the so-called *Bradford Case*, *Pere Marquette R. Co.* v. *Bradford et al.*, 149 Fed. Rep., 492, which was finally settled as told in the C., H. & D. section of this report. Neither in the *Bradford Case* nor in the evidence before us in this proceeding is it explained why the bond issue and the stock acquisition were never written up in the Pere Marquette accounts.

Throughout this time, down to the beginning of the first receivership, there were reductions in the funded debt, mainly resulting from maturing payments on the equipment trusts. Only a negligible retirement of the straight bond issues was effected.

The additional issues of Eastern Equipment Company notes covered the remainder of this trust, bringing the total issue up to $3,201,000. The Winthrop trust furnished to the company—

Locomotives	20
Box cars	1,250
Coal cars	1,000
Convertible ballast cars	100

But for this equipment there were cash payments, in addition to the trust notes, to the amount of $457,266, realized from the sale of the refunding mortgage 4 per cent bonds.

These Pere Marquette refunding mortgage 4 percents were the bonds of which the C., H. & D. purchased and guaranteed $9,207,000, the total amount issued during the Zimmerman-Hollins régime. The details of that transaction and the syndicating arrangements incident thereto are all set out in the C., H. & D. section of this report. In the issue of these securities the Pere Marquette suffered a discount of $1,214,522.50. The records indicate that the cash realized, $7,992,477.50, was disbursed for the following:

Toledo Railway & Terminal Co.'s stock	$1,645,000.00
Wolverine Coal Co. stock (balance)	62,500.00
Retirement of equipment obligations	1,179,724.81
Retirement of G. R. N. & L. S. R. R. Co. bonds	19,000.00
Pere Marquette Steamship Co. advances	75,000.00
Cash payment on Winthrop equipment	457,266.00
Repayment of loans	3,625,000.00
Dividend on preferred stock	210,000.00
Bond interest	150,000.00
Audited vouchers (including miscellaneous expense items)	393,041.52
Balance available for additions and betterments	175,945.17
Total	7,992,477.50

The condition of the finances of the company about this time and for some time before made it necessary for the management to provide ready cash to meet the current obligations then outstanding. From the moneys received from the issue of bonds $3,625,000 was used to take up notes on which cash had been raised to meet such obligations of this and the former management.

It is significant that by June 30, 1905, the Zimmerman-Hollins management had reduced to $700,000 the loans and bills payable, which had aggregated $1,837,151.65 the year before. Special deposits had been made to cover a half million dollar liability for

matured interest unpaid, but the cash was overdrawn by some $675,-115.42 net on June 30, 1905.

An additional amount of $1,179,724.81 was needed from the proceeds of these bonds to meet the increasing payments on equipment purchased and retirement of equipment trust issues. Also, in order to fulfill the company's obligations in respect of the purchase of the 35,000 shares of Toledo Railway & Terminal Company stock, $1,645,000 was necessary, and this amount was supplied from the cash received from the sale of these bonds. This company will be referred to herein as the "terminal company." The details of this latter transaction are recited at length in the C., H. & D. section of this report, and in Appendix 12.

Indication that the increase of $10,136,000 in interest-bearing securities meant little in the way of new property is found in the fact that in the 12 months to June 30, 1905, the investment accounts increased only $7,079,521.10, although funded debt retirements required only $1,198,724.81. This $7,079,521.10 was represented by the following:

1. Capital stock, Toledo Ry. & Terminal Co., 35,000 shares	$1,645,000.00
2. Capital stock, other affiliated companies	87,716.30
3. Advances to Toledo Ry. & Terminal Co	78,750.00
4. Advances to Chicago, Cincinnati & Louisville R. R. Co	823,276.06
5. Advances to other affiliated companies	334,457.84
6. Miscellaneous physical property	11,425.45
7. Sinking fund deposits	15,000.00
8. Equipment	2,294,707.31
9. General improvements, additions, and betterments, net	1,024,826.71
10. Improvements on Canadian property	20,671.18
11. Discount, commissions, and expenses on securities	1,242,690.25
12. Expenses Prince voting trust	1,000.00
Total	7,079,521.10

Furthermore, items 1, 3, and 4 in the above list were bad investments of over $2,000,000 cast upon the Pere Marquette as incidents of the operations of the C., H. & D. stock syndicate and the Hollins-Zimmerman combination of interests which succeeded it. Items 11 and 12, aggregating nearly one and a quarter million dollars more, manifestly brought nothing whatever in the way of property to the Pere Marquette.

When to these bad investments, discounts, and the like, there is added the amount used to pay off floating debt, covering current accounts, it becomes apparent that the issues during the Zimmerman-Hollins régime of the refunding mortgage 4 per cent bonds saddled upon the Pere Marquette an annual fixed charge of at least $250,000 for nothing of substantial permanent value.

The income account for the year to June 30, 1905, included the operation to the Niagara frontier over the Michigan Central tracks, which began about July, 1904. The year's gross operating revenues reached $12,667,420.34, but the operating expenses increased faster than the revenues, and amounted to $9,640,676.13, a ratio of 76.11 per cent. The resulting net operating revenue was a decrease of $111,151.11 from that of the year ending December 31, 1902, when the operated mileage was much less.

Apparently it was necessary in this year to make up some of the work deferred by the preceding management. The expense for maintenance, already set forth in the discussion of the Prince management, *ante*, page 45, would of itself indicate this, as does the relation of the operating expense accounts. It also appears from the rail records that 85-pound rail was adopted and 63.15 miles laid; but general roadway and track work and tie renewals did not proceed at the rate demanded by proper maintenance, nor at the rate under the Crapo-Thayer management.

The difficulties did not end with increase in operating expenses. Rentals of tracks, yards, terminals, buildings, and other property aggregated $753,251.86, almost $550,000 over the rentals for 1902, thus reflecting the cost of reaching Chicago and the Niagara frontier. Bond interest charges amounted to $2,178,954.83, the increase over 1902 being almost exactly 50 per cent.

Dividends paid during this year aggregated $531,234.25 made up as follows:

Date paid.	Par value.	Class of stock.	Rate (per cent).	Amount paid.
Dec. 31, 1904	$10,509,800	Preferred	2	$210,196.00
June 30, 1905	10,512.200	do	2	210,244.00
Mar. 31, 1905	3,165,550	Common	1	31,655.50
June 30, 1905	3,165,550	do	2½	79,138.75
Total				531,234.25

The dividends paid in 1905 came within the scope of the lease of the Pere Marquette to the C., H. & D., effective on March 1, 1905, whereby the latter road guaranteed the payment annually of 5 per cent on the common and 4 per cent on the preferred stock of the Pere Marquette. In consequence the aggregate of the 1905 dividends, $321,038.25, was charged against the C., H. & D. and handled as "income from other sources," but even with this the net result that year was a loss of $22,430.48. Nevertheless the dividend disbursements aggregated $531,234.25.

This year to June 30, 1905, and in fact the period of the entire Zimmerman-Hollins management down to October 20, 1905, was a

time when the Pere Marquette was, so to speak, slipping back rapidly. It did not, to be sure, fail to *pay* its bond interest, but this fact, much stressed by the representative of J. P. Morgan & Company, who appeared before us in this proceeding, must be considered in the light of the methods, already discussed, which were adopted to meet current obligations; also in the light of the deferring of maintenance required to bring about even the result shown by the income account, unsatisfactory as that result was.

VIII. MORGAN MANAGEMENT, FROM 1905.

It seems proper to treat these years as one period in the history of the Pere Marquette. During this period there were extensive changes in the stock ownership, particularly in the transfer of the C., H. & D. holdings of 110,000 shares of Pere Marquette common to J. P. Morgan & Company, and there were changes in the Pere Marquette directorate as a result of the purchase of control of the C., H. & D. first by the Erie and then by the Baltimore & Ohio, while the C., H. & D. still held that common. But from December 4, 1905, when George W. Perkins went on the Pere Marquette board, representing Morgan & Company, that firm seems at all times to have been the guiding hand in Pere Marquette affairs.

The first event of importance, following the acquisition of C., H. & D. control by the Erie on October 20, 1905, and the reorganization in its interest of the Pere Marquette board, was the receivership under Judson Harmon, commencing December 4, 1905. This was coincident with the receivership of the C., H. & D., and on behalf of Morgan & Company it is insisted that the step was necessary in order to separate the two corporations. However that may be, it is apparent that the Pere Marquette of itself was then well on the way toward a receivership. It continued under a receiver until December 14, 1907. Under a plan for reorganization without foreclosure, proposed in August, 1907, the consolidation of this company with the Pere Marquette Railroad of Indiana, its subsidiary, was effected, and an issue of $5,000,000 of debenture bonds was authorized to retire its floating indebtedness. These bonds were offered to and purchased by the stockholders of the Pere Marquette, and carried with them a stock bonus which has already been explained, *ante*, page 31. This bonus was made out of the treasury stock which had been returned to the Pere Marquette by the C., H. & D., through the Harmon-Crapo arbitration of the financial difficulties between the two roads, as subsequently told in the C., H. & D. section of this report. These bonus issues increased the actual or outstanding capital stock liability by $1,713,016. The new company's capital stock account increased $500,000 over that of the predecessor in

order to take up a like amount, being the entire issues, common and preferred, of the capital stock of the Pere Marquette of Indiana owned by the parent company.

Funded securities were issued during this period as follows:

Mortgage bonds	$17,745,000.00
Debenture bonds	5,000,000.00
Collateral trust notes	8,000,000.00
Trust notes	1,200,000.00
Equipment obligations	14,958,471.52
Receiver's certificates	6,543,360.00
Receiver's notes	1,150,000.00
Total	54,596,831.52

The consideration received by the Pere Marquette for the foregoing was:

Sold for cash	$30,544,825.48
Exchanged for equipment	7,483,586.25
Exchanged for securities of carrier's own issue	5,595,885.27
Given in settlement of Bradford suit regarding Chicago, Cincinnati & Louisville Railroad Co. stock purchase	400,000.00
Total consideration	44,024,297.00
Discount, etc	10,572,534.52
Total	54,596,831.52

So far as can be ascertained, the cash realized from the sale of securities was disbursed as follows:

Equipment obligations retired	$11,408,854.32
P. M. collateral trust notes retired	6,395,236.04
Grand Rapids, Kalkaska & Southeastern R. R. bonds retired	142,000.00
Receiver's certificates and notes retired	2,863,360.00
Cash payment for new equipment	991,896.49
Additions and betterments (gross)	6,923,587.01
Other corporate purposes	1,819,891.62
Total	30,544,825.48

During this period the investment in road and equipment account increased $15,524,287.67. The following is representative of the addition.

New equipment	$8,475,482.74
Additions and betterments	6,923,587.01
Charges to road and equipment not representative of property	5,413,512.83
Gross charges	20,812,582.58
Less equipment and property retirement and miscellaneous credits	5,288,294.91
Net charges	15,524,287.67

The $5,413,512.83 not representing property is made up of the following items:

Pere Marquette International Bridge Co., project abandoned	$1,015.95
Buffalo & Niagara Terminal R. R. Co., amount advanced	5,424.55
Adjustment of Pere Marquette Steamship Co. accounts	233,713.58
Payment to city of Chatham, Ontario, in settlement of claim against Pere Marquette for nonmaintenance of car shops at Chatham	17,600.00
Trustees services account Eastern Equipment Co	2,609.00
Excess amount charged over cost of construction of P. M. of Ind	440,068.19
Worthless assets and accrued deficit carried on books of Pere Marquette prior to reorganization	4,711,470.44
Miscellaneous adjustments of equipment, operating expenses, etc	1,611.12
	5,413,512.83

The item of $4,711,470.44 deserves further exposition. It was charged to property account by instructions of the president, William Cotter, as authorized by the board of directors at a meeting held on August 18, 1908. The following extract is taken from the minutes of that meeting:

The attention of the board was called to the following asset or debit accounts appearing on the books of the Pere Marquette Railroad Company, viz:

Toledo Railway & Terminal Co. stock	$1,645,000.00
Advances to Toledo Ry. & Terminal Co.	70,000.00
Advances to Chicago, Cincinnati & Louisville R. R. Co	423,009.34
C., C. & L. Bradford settlement	400,000.00
Sarnia, Petrolia & St. Thomas Ry. stock	9,884.52
Discount and expenses in connection with the issue of 4 per cent refunding bonds	128,047.00
Profit and loss debit, June 30, 1907	2,186,066.16
	4,862,007.02

and also the following credit or liability accounts appearing on the said books, viz:

Inventory, overages, prior to receivership	$117,335.56
Steel rail suspense account, prior to receivership	33,201.02
	150,536.58

The president requested authority to write off or cancel the above accounts on the books of the company, stating that the debit accounts did not, in fact, represent existing assets of any value, and explaining that the carrying of said items in the accounts would make our balance sheet misleading as to the true assets and operations of the new company. On motion, the president was authorized to have the necessary entries made on the books, charging the amount of the loss to property accounts.

This entry was made on the books of the reorganized Pere Marquette after the consolidation but as an incident thereof. The intent was to wipe out what the entry described as "worthless accounts," carried from the books of the old company.

It must be borne in mind that the sole aim of this consolidation was to reorganize the Pere Marquette, which had been in receivers' hands for about two years, without foreclosure. The only new property added to the Pere Marquette was a line of 20.7 miles in Indiana with no equipment except an officer's private car, and some Chicago terminals of small extent. The construction of that property had been very largely done by the Pere Marquette and its actual cost was a little over $700,000. In the reorganization the cost of road on the books of the reorganized company was inflated to the extent of over $5,000,000. The propriety of this transaction was defended by the representative in this proceeding of J. P. Morgan & Company, on the ground that it would have been an absurdity to start out the new company with a deficit. This defense, however, must be considered in the light of a subsequent transaction, next related.

In the Harmon-Crapo arbitration the Pere Marquette was awarded $1,364,000 as compensation for its claims. That debt was subsequently liquidated in 1909 in C., H. & D. general mortgage bonds. The same representative of Morgan & Company, who as attorney for the Pere Marquette had pressed its claims before the arbitrators, expressed the view that this award was probably dictated by the very losses which had produced these "worthless assets" loaded into the property investment account. Nevertheless when the Pere Marquette later wrote up those C., H. & D. bonds at 60 per cent of their par value, or $818,400, this latter amount was credited, not to the property investment account, but to profit and loss.

During this same period of 1906–1914 other investments decreased $2,919,664.64, mainly due to the adjustment of the terminal company and Chicago, Cincinnati & Louisville accounts charged into cost of road, as just shown. Floating equipment owned by the Pere Marquette which had previously been turned over to the Pere Marquette Steamship Company, a subsidiary, and carried as an investment, was transferred back and the accounts were adjusted by the inclusion thereof in cost of property. The $1,364,000 par value C., H. & D. general mortgage bonds received from the C., H. & D. in settlement of the award under the Harmon-Crapo arbitration were set up as an "other investment" at 60 per cent of their par value and the same amount was credited to profit and loss. Advances of $222,672.12 were made to the Toledo Terminal Railroad Company, the successor of the terminal company.

The income account for these years shows an aggregate loss of $12,962,905.48, the results condensed being as follows:

Operating revenues and other income	$139, 589, 905. 91
Operating expenses including taxes	115, 262, 027. 94
Gross income	24, 327, 877. 97

Deductions from gross income:		
Hire of equipment	$2,550,087.39	
Rentals	6,519,457.52	
Bond and other interest	28,110,968.15	
Miscellaneous	110,320.39	
		$37,290,783.45
Net loss		*12,962,905.48*

In connection with this showing we find it necessary again to comment upon the position taken by Morgan & Company in this proceeding. It was urged upon us that at no time during the first receivership and up to the commencing of the second on April 5, 1912, did the Pere Marquette make default in its payment of fixed charges. Such is the fact, but it is also the fact that those interest payments were not wholly earned, but were met partly out of the proceeds of receivers' certificates, afterwards funded in the debenture bond issue, and out of a fictitious net revenue, secured only at the expense of proper maintenance of the property. The only year of possible exception was 1910. To a considerable extent the degree to which maintenance was deferred during this period of Morgan control is clearly evidenced by the comparison of operating expenses in Appendix 4; it is shown also by the statistics of rail and tie work, and car and locomotive condition, as set forth in our discussion of the physical condition of the property; it was obvious to the engineers of this Commission who inspected the property in the late fall of 1914; and it is freely admitted by the carrier's operating management.

Through this Morgan reorganization the Pere Marquette emerged from receivership in 1907 carrying a load of outstanding capital stock and funded debt heavier by $7,000,000 than that under which it was staggering when the receivership began two years before. It never succeeded in carrying itself thereafter. A proper reorganization would have included reduction and not increase of fixed charges. The plan of reorganization dated October 30, 1916, carries marked decrease in fixed charges.

Other losses carried through the profit and loss account in addition to the results of operation must be considered. In the aggregate the showing to June 30, 1914, was as follows:

Debits:	
Net loss from income	$12,962,905.48
Debt discount extinguished	10,500,486.02
Net loss on retired road and equipment	3,054,800.59
Miscellaneous debits	724,047.40
Total debits	27,242,239.49
Credits: Miscellaneous credits	5,187,199.76
Profit and loss balance (deficit)	22,055,039.73

The major portion of the "debt discount extinguished" is the amount of discount resulting from the sale of $16,000,000 of Pere Marquette improvement and refunding general mortgage 5 per cent bonds. These bonds had been pledged as collateral with the trustees of an $8,000,000 issue of Pere Marquette collateral trust 6 per cent notes, which brought in 95 per cent cash, or $7,600,000, furnished by J. P. Morgan & Company. This issue was made with the approval of the Michigan Railroad Commission. The interest on the notes being in default, the trustee sold the $16,000,000 of collateral bonds at auction for the sum of $6,395,236.04, the bonds being bid in by a committee representing the $8,000,000 of notes. The proceeds were applied pro rata on the face of the notes, leaving a balance of $1,604,763.96 still due. The carrier chose to charge to profit and loss all the resulting discount of $9,604,763.96 on the bonds instead of amortizing any part thereof. Thereafter interest accrued on the $16,000,000 of bonds as well as on the deficiency of $1,604,763.96 on the notes.

Morgan & Company's representative before us stated that he did not know the names of all the holders of the bonds, and when asked to tell the names of those he did know declined to do so, for the expressed reason that he felt that he should not advertise the ownership of worthless bonds. He admitted, however, that Morgan & Company were interested in the ownership of the bonds and in the balance remaining unpaid on the notes. The extent of that interest is not disclosed of record.[1]

In January, 1912, the Old Colony Trust Company,[1] of Boston, loaned the Pere Marquette $1,200,000 on its 6 per cent notes maturing July 28, 1912, and secured by $1,200,000 par value of Pere Marquette improvement and refunding general mortgage 5 per cent bonds and the $1,364,000 of C., H. & D. general mortgage bonds which had been accepted by the Pere Marquette in satisfaction of the Harmon-Crapo arbitration award. After default this collateral was sold on February 17, 1915, the proceeds being as follows:

$1,200,000 P. M. improvement and refunding bonds brought	$60,037.50
$1,364,000 C., H. & D. general mortgage bonds brought	477,550.00
Total	537,587.50

The result, with costs of sale, left $656,092.80 still outstanding, and created an additional liability of $1,200,000 at 5 per cent on the books of the Pere Marquette, besides reducing its investment account by $818,400, at which figure the C., H. & D. bonds had been carried.

We direct attention here to the C., H. & D. portion of this report where it is shown that the Baltimore & Ohio Railroad Company was

[1] The plan for reorganization of the Pere Marquette, recently announced, provides that collateral trust notes, and the Old Colony notes, deposited under the plan, must be accompanied by the collateral to the extent respectively received by the holders thereof.

then bound to retire these C., H. & D. bonds before or during July, 1916, by paying $850 cash for each $1,000 bond, or by issuing in exchange therefor a new C., H. & D. 4 per cent bond guaranteed by the Baltimore & Ohio; also that the Baltimore & Ohio did finally pay $700.86 cash for each $1,000 par value of those C., H. & D. bonds.[1]

The profit and loss charge of $3,054,800.59 represents that portion of the loss on the road and equipment abandoned, sold, or otherwise retired during this period which was charged to profit and loss. Included in the miscellaneous credits aggregating $5,187,199.76 is an item of $2,186,066.16 representing deficit from operation to June 30, 1907, written out of profit and loss and charged to cost of property, as already stated, subsequent to the 1907 reorganization. Of the balance, $1,978,912.44 was due to setting up the treasury stock of the company from its book value of $193,997.56 to the par value of $2,172,910.

The history of this latter item goes back to the date of the organization of the original Pere Marquette as of January 1, 1900. In that connection it has heretofore been shown that at that time the company set up as an outstanding liability and charged into its investment in road and equipment its entire issue of $28,000,000 of capital stock, although $3,322,250 remained in the hands of trustees for the company. The $2,172,910 written up to par value in 1912 was what remained of that treasury stock. It was written up to par value, as an asset, upon instructions of this Commission, but instead of simultaneously decreasing the investment in road and equipment accordingly, the obviously proper method of handling in view of the earlier transactions recited, the credit was placed in profit and loss. True, the officials who so dictated were not those who had recorded the transactions of 1900, but there is no excuse for their failure to ascertain the facts as they have been disclosed in this record, and to record the transaction by decreasing the amount of the investment in road and equipment.

The improper accounting for these two credits resulted in reducing the profit and loss deficit by over $4,000,000. A further item included in miscellaneous credits is $818,400, being the amount set up in investment account to cover the book value of C., H. & D. general mortgage bonds previously referred to, and credited to profit and loss.

IX. FINANCIAL RESULTS, 1900–1914.

The financial results of the exploitation and mismanagement to which this carrier has been subjected are disclosed to some extent in

[1] Apparently the payment by the Baltimore & Ohio ultimately inured to the benefit of the Pere Marquette, for in the recently announced plan for reorganization of the latter company only $144,000 is shown as balance due on the Old Colony notes, and only that amount is provided for in the exchanges of new company's securities for old.

the comparative statement of property and finances for these 15 years, Appendix 4. A better exposition is an aggregation of the income account and an analysis of the profit and loss transactions for the entire period. These follow:

Income account, Jan. 1, 1900, to June 30, 1914.

Operating income:		
Railway operating revenues	$193, 975, 425. 07	
Railway operating expenses	148, 473, 850. 05	
Net revenue from railway operations		$45, 501, 575. 02
Railway tax accruals		8, 033, 118. 72
Railway operating income		37, 468, 456. 30
Revenues from miscellaneous operations	$3, 112, 138. 24	
Expenses of miscellaneous operations	3, 307, 433. 61	
Net loss from miscellaneous operations		*195, 295. 37*
Total operating income		37, 273, 160. 93
Nonoperating income		2, 414, 260. 04
Gross income		39, 687, 420. 97
Deductions from gross income:		
Hire of equipment	$3, 004, 499. 27	
Rentals	8, 267, 899. 67	
Interest on funded and unfunded debt	37, 157, 046. 61	
Miscellaneous income charges	108, 992. 56	
Total deductions from gross income		48, 538, 438. 11
Net loss		*8, 851, 017. 14*
Miscellaneous adjustments of income through profit and loss account (net debit)		573, 648. 58
Net loss from operations		*9, 424, 665. 72*

Profit and loss account. Analysis of entries from Jan. 1, 1900, to June 30, 1914.

	Dr.	Cr.
1. Net loss from operation, Jan. 1, 1900, to June 30, 1914	$9, 424, 665. 72	
2. Profit on road and equipment sold		$1, 553. 08
3. Deficit prior to 1908 charged to cost of road [1]		2, 186, 066. 16
4. Book value of Cincinnati, Hamilton & Dayton Ry. Co. bonds [2]		818, 400. 00
5. Treasury stock set up to par value [3]		1, 978, 912. 44
6. Surplus applied to sinking and other reserve funds	$552, 277. 03	
7. Dividend appropriation of surplus [4]	2, 907, 485. 25	

[1] Deficit to Jan. 1, 1908, charged to cost of road by authority of board of directors.

[2] These bonds, par value $1,364,000, had previously been carried at a nominal value of $1. By action of board of directors book value was raised to $818,400.

[3] Treasury stock, par value $2,172,910, had been carried at a book value of $193,997.56 and was raised to par value.

[4] Detail of dividend payments will be found in Appendix 7.

8. Surplus appropriated for investment in physical property	$527,818.00	
9. Debt discount extinguished through surplus	10,525,486.02	
10. Surplus transferred to contingent fund	250,000.00	
11. Miscellaneous appropriation account flood damage	300,383.96	
12. Loss on retired road and equipment	3,056,353.62	
Balance (loss)		$22,559,537.97
	27,544,469.60	27,544,469.60

The details of the transactions resulting in the more important profit and loss items shown above have been set forth in the foregoing pages. We have there commented upon the impropriety of treating as "surplus" items 3, 4, and 5. The dividend appropriations are shown in detail in Appendix 7. Substantially all the extinction of debt discount through surplus accrued during the period of Morgan control, and is there explained. Items 10 and 11 are incidents of the manipulations of the operating expense accounts of the Prince régime. The loss on retired road and equipment seems to have been properly handled.

It must not be understood that these income and profit and loss figures tell the whole story. There must be borne in mind those other losses which, during these 15 years, have been disposed of by the handy device of charging them up as "cost of road and equipment." These, since the organization of 1900, aggregated $6,995,690.53. Furthermore, as to all the different losses, all doubts have been resolved in the carrier's favor.

In the two years ended June 30, 1916, the Pere Marquette's gross operating revenues increased very materially, mostly as the result of additional tonnage handled. Expenses did not increase relatively, and the net income result was more satisfactory than for many years, the deficit in 1915 being $1,419,264.53, and 1916 producing a surplus from operations amounting to $254,557.66. But in these same two years the accrued deficit grew to $31,161,555.92, mainly on account of debt discounts extinguished through surplus.

X. PHYSICAL CONDITION, 1900–1915.

To comply with that portion of the request of the House Committee on Interstate and Foreign Commerce which relates to the physical condition of the equipment and property of the Pere Marquette an examination was made by engineers of the Commission's division of valuation in the fall of 1914. Only the property and equipment in the United States was covered; the Canadian lines were not. The road inspection was made by means of a railroad motor car, and the inspecting party was at all times accom-

panied by a division engineer of the carrier. Detailed examination was also made of the structures, shops, and equipment, and recourse was had to the engineering records. The report of the valuation engineer in charge of this work was submitted to the Pere Marquette, and was later incorporated in the record in this proceeding. It considers separately each of the various elements of the road's property and equipment.

The general conclusions of the inspecting party were that the Pere Marquette at that time was in nearly, but not quite, the condition usually maintained in ordinary railroad practice for handling traffic of similar kinds and amounts in the manner necessary to provide fair service to the public. To state it another way, while the property and equipment was not *markedly* below what might be called usual operating condition, it was on the average somewhat below. It was also apparent to the engineers that much maintenance work had been done and important improvements and additions made in the two or three years preceding the time of the inspection. As a result, rail, the most important item of track maintenance, had been increased in weight, ties had been extensively renewed, and there was a general betterment in other particulars of the track structure. During the same period the motive power and other rolling stock, and the shop facilities also, had been similarly improved. New locomotives had been added and the old ones greatly bettered, passenger and freight cars had undergone heavy repairs, and shop facilities had increased. But, with all this, it was apparent to the engineers that other road and equipment maintenance and improvements were still necessary to bring the road up to proper condition.

It should perhaps be added that what has been said with specific reference to rails and ties applies with equal force to most of the other elements of roadway maintenance, and that while much was done in the few years preceding the late months of 1914, there then still remained room for improvement in general track maintenance, in ballast, in passing, side, and station tracks, in automatic and other block signals, in fencing, in bridges, and in depots and other structures, especially in the smaller communities. The work on the bridges, however, was less deferred than were the other elements of maintenance. Much of this additional work was in fact already "programmed" in 1914 and has since been performed.

In all, 1,782 miles were inspected by the Commission's engineers, and the track was classified as follows:

	Miles.
Above usual condition	190
Usual condition	1,251
Poor condition, but safe	263
Bad condition, and unsafe	78

The Pere Marquette officials incline to the view that the mileage in usual condition would run somewhat more than 1,251 miles, and they object to the classification of "bad" track as unsafe, although admitting the "bad" condition. It is only fair to add that the poor and bad track was found for the most part in the unimportant branch lines. Authority was then being sought to abandon at least part of such mileage. The track above normal was almost all between Detroit and Grand Rapids. As to the entire mileage the conclusion was expressed that generally the rail was light for the traffic, there being a considerable proportion of 56-pound and less, which was too light for present day rolling stock. But here it should be stated that in the three years to January 1, 1915, the average age of rail in the track had been reduced by 7.5 years, and its average weight had been increased from 64.18 pounds to 69.87 pounds.

Of the locomotives 97 per cent were inspected, and 76 per cent were found in normal condition or better. Passenger cars examined comprised 89 per cent of the total, and although many were quite old, they were rated in fair condition for the traffic handled. Eight per cent of the freight cars were looked over, and the records on all freight cars examined, and the report on this class of equipment indicates a lack of modern steel construction. As the result of the extra work in recent years the wooden cars were being rapidly brought up to normal condition.

These general conclusions of the Commission's engineers were characterized by the present operating manager of the Pere Marquette as "a very fair statement."

It follows quite obviously that when the extraordinary repairs, renewals, and betterments were begun, say about 1911–12, the road, structures, and equipment must have been in a condition much below normal. This deduction is admitted by the carrier. The condition of the property was not so good in 1912 as it was in 1905. The deterioration was in fact very marked. Such a condition must inevitably have been the result of policies such as had been pursued by succeeding managements since 1902, as already detailed in this report. But additional evidence may profitably be referred to as indicating that inevitability.

To this end there is inserted below a summary of the rail-laying record of the company beginning with 1900, and ending October 31, 1914, and a statement showing the crosstie renewals for the years 1902–1914, both taken from the Pere Marquette's engineering records.

Miles of rail laid.

Year.	56-pound.	60-pound.	65-pound.	67-pound.	70-pound.	75-pound.	85-pound.	90-pound.	Total.
1900	2.72				10.60				13.32
1901					42.00	153.15			195.15
1902					28.50				28.50
1903						.60			.60
1904						3.40			3.40
1905		0.50			8.80		63.15		72.45
1906					1.00	12.90	23.50		37.40
1907					6.90		16.05		22.95
1908									None.
1909					3.35	5.55			8.90
1910	1.07				3.35	25.10			29.52
1911	4.50				6.25	111.90			122.65
1912						38.33	23.00	61.80	123.13
1913		40.80	2.23	15.10	25.40	107.45		178.80	369.78
1914						32.85	15.40	46.25	94.50

Crosstie renewals.

Year ending June 30—	Main tracks.				Sidetracks.			
	Miles.	Average number ties laid per mile.	Percentage of renewals.	Presumed life (years) based on ties renewed.	Miles.	Average number ties laid per mile.	Percentage of renewals.	Presumed life (years) based on ties renewed.
1902	1,809.04	286	8.9	11.2	593.30	218	7.8	12.8
1903	2,124.22	242	7.5	13.2	643.61	200	7.1	14.0
1904	2,128.87	260	8.12	12.3	674.61	205	7.3	13.6
1905	2,139.45	221	6.9	14.5	748.17	158	5.6	17.7
1906	2,151.15	178	5.5	17.9	745.96	128	4.5	21.9
1907	2,105.68	179	5.6	17.9	743.54	190	6.8	14.7
1908	2,103.94	298	9.3	10.7	742.55	169	6.03	16.5
1909	2,089.50	122	3.8	26.2	740.15	96	3.4	29.1
1910	2,081.85	222	6.9	14.2	785.29	183	6.5	15.3
1911	2,076.20	264	8.2	12.1	804.55	170	6.0	16.4
1912	2,074.90	256	8.0	12.5	849.66	352	12.5	8.0
1913	2,074.90	375	12.7	7.7	852.52	266	9.4	10.6
1914	2,066.50	251	7.8	12.7	865.74	219	7.8	12.7
Averages	2,079	242	7.5	13.2	753	198	7.0	14.1

NOTE.—This statement is compiled upon the following basis: Life of a tie accepted by engineers of carrier and Commission as 11 years, character of tie, soil, drainage, traffic, and all other necessary elements taken into consideration. Ties in main track average 3,040 per mile. Ties in sidetrack average 2,816 per mile. Therefore, proper yearly maintenance would require the following: Ties per mile in main track 276; in sidetrack, 255. Percentage to be renewed in main track, 9; in sidetrack, 9.

The record of switch tie renewals was furnished beginning with the year 1906. It shows that in the main track renewals have averaged sufficiently high for adequate maintenance, although it was necessary to take up some slack in 1909, 1912, and 1914. In the sidings, however, switch tie renewal has been inadequate and has been made up in part by using crossties interlaced, an undesirable practice.

The statements next following show the condition of the Pere Marquette's equipment at stated times during the past few years. These also were furnished by the carrier's representatives. The locomotive situation should be viewed in the light of the purchase in 1910 and 1911 of many new first-class engines, with a resultant improvement in the average condition during that period; also, in the light

of the fact that locomotives are customarily kept up better than cars. Their condition was considered by the management to be well up to par about April, 1915. The "bad order" car statements show the cars out of commission, and should be read with the understanding that such cars on the Pere Marquette should not normally exceed 1,000.

Comparative statement of bad order cars.

Date.	Box, all kinds.	Stock.	Coal.	Flat.	Way.	Total.
March, 1911	1,022	27	359	111	9	1,528
July, 1911	1,751	48	441	128	....	2,368
November, 1911	517	13	212	70	....	812
March, 1912	462	22	202	82	....	768
July, 1912	795	29	398	98	....	1,320
November, 1912	495	8	268	81	....	852
March, 1913	780	21	307	29	....	1,137
July, 1913	1,881	19	610	112	....	2,622
November, 1913	2,413	22	719	85	14	3,253
March, 1914	2,478	14	631	78	....	3,201
July, 1914	2,467	14	500	48	8	3,037
November, 1914	1,730	22	253	74	1	2,080
March, 1915	1,364	24	361	57	6	1,812

Comparative statement showing condition of locomotives.[1]

Date.	Good.	Fair.	Poor.	Ready for shop.	In shop.	Waiting for shop.	Condemned.	Leased.	Total.
	Shopping not required for—								
	Over 9 months.	4 to 9 months.	Up to 4 months.						
Oct., 1911	255	39	63	([1])	38	29	5	3	432
Apr., 1912	119	106	89	([1])	49	40	1	3	[2] 417

Date.	Shopping not required for—				In shop.	Waiting for shop.	Too light or condemned.	Leased.	Total.
	Over 12 months.	6 to 12 months.	2 to 6 months.	Up to 2 months.					
Jan., 1914	78	90	122	37	38	20	28	....	413
Apr., 1914	109	100	76	30	38	21	36	....	410
July, 1914	152	87	64	16	37	19	4	....	379
Oct., 1914	161	90	62	13	38	9	3	....	376
Jan., 1915	170	87	44	19	39	9	5	....	373
Apr., 1915	180	89	31	22	31	4	11	....	368

[1] Classification of condition changed on Jan. 1, 1914, as indicated by statement. In 1913, strike in shops made conditions abnormal; figures not reported.
[2] Ten locomotives unaccounted for.

It may be added as to the locomotives that the federal inspections during 1912 and 1913 showed about the same percentage of locomotives found defective, but many more were ordered from service in the latter year than in the former. In explanation of this the management points to strike conditions in the shops in the year 1913.

Another indication of the condition of the car equipment is found in a comparison annually of the hire of equipment balance. This follows:

Exchange of equipment balances.

Year.	Earned.	Lost.	Year.	Earned.	Lost.
1900		$107,194.68	1908	$213,445.33	
1901		107,146.97	1909		$10,464.72
1902		112,343.42	1910		143,213.40
1903	$22,624.56		1911		570,232.50
1904		23,197.48	1912		614,819.27
1905		83,642.64	1913		439,734.54
1906	57,041.63		1914		771,572.96
1907	309,651.24				

In explanation attention is called to the large purchases of freight cars at about the time the balances were most favorable to the Pere Marquette, a further indication, as we think, that such equipment was good while it lasted, without adequate repairs, but was not kept up to the condition necessary to retain it in interchange traffic.

The foregoing statements leave no doubt that after 1901 there was practically no adequate rail work until the years 1911, 1912, 1913, and 1914, although the 1905 record was somewhat better than usual. They further clearly show that the tie performance was inadequate from the very advent of the Prince administration, January 1, 1903, through 1907; and that, after a slight improvement in 1908, tie maintenance was regularly and greatly deferred until the years 1912, 1913, and 1914. The statements emphasize the deductions already made that one of the road's chief sources of suffering has been long deferred maintenance of road, structures, and equipment, particularly cars.

A glance at the income and operating expense accounts for recent years, especially during the present receivership, will readily indicate the financial effect of deferring maintenance to the extent theretofore practiced on the Pere Marquette. The extraordinary renewals and repairs required and made largely under the protection of the court in the years 1912, 1913, and 1914, together with adequate depreciation charges made on order of the court, were responsible for the tremendous increases in operating expenses in those years, resulting in 1914 in an operating ratio greater than 100 per cent.

There was much complaint of poor service throughout the territory served by the road during the early months of the receivership. That complaint must necessarily, we think, have greatly diminished as the result of the work done in the past few years. As early as November 1, 1914, more than half the locomotives were counted by the management in first-class condition and three-fourths were rated in either first or second class condition. With

the power so improved and with the great improvement in the rolling stock generally and in the condition of the roadway and track, the Pere Marquette found itself able to increase its freight train load from 360 tons in the last six months of 1910 and 376 tons in the last six months of 1911 to 503 tons in the same months of 1914, and the latter period we may note was not one of unusual prosperity with carriers. Furthermore, the passenger train record in 1914 averaged almost 90 per cent on time, and in winter weather through April, 1915, had reached almost 95 per cent, whereas in 1912 the percentage of passenger trains on time was not infrequently running less than 60 per cent. In the same years there was marked improvement in the safety of operation. In 1912 the road accidents numbered 416, the yard accidents 109, and the aggregate financial loss therefrom was $122,083.04; in 1914 the road accidents were 146 and the yard accidents 29, while the money loss aggregated but $38,117.22.

The present operating management admits practically all of the deductions as to past performance drawn by the Commission in this report, but it points to the great improvement made possible under the present receivership, although conceding that considerable work still remains to be done. It would seem that the future of the road now rests, first, in the effectiveness of its reorganization, second, in the character of its subsequent financial management, and, third, in its ability to secure traffic. A real receivership seems to have put the road in a condition where it can economically handle its traffic.

CINCINNATI, HAMILTON & DAYTON.

We shall now consider the Cincinnati, Hamilton & Dayton, following the subjects as listed on pages 9 and 10.

I. CINCINNATI, HAMILTON & DAYTON RAILROAD, 1846–1895.

This road was chartered as "Cincinnati and Hamilton Railroad Company" under Ohio laws on March 2, 1846, but the name was changed to "The Cincinnati, Hamilton and Dayton Railroad Company" on February 8, 1847. The company's line, completed and opened for traffic in September, 1851, extended from Cincinnati through Hamilton to Dayton, Ohio, a distance of about 60 miles. No change occurred in the corporate identity of the road or in the mileage owned by it until the consolidation of 1895, later described.

On March 5, 1851, the "Dayton and Michigan Railroad Company" was incorporated in Ohio to build a line from Dayton to Toledo, about 141 miles. This was completed in 1859. No change has occurred since in the corporate identity of that company, or in the mileage owned by it. The C., H. & D. as a corporation and through its own stockholders early acquired an interest in the new company and on May 1, 1863, leased its entire line in perpetuity. By this lease the C., H. & D. was given as a bonus $1,000,000 in par of Dayton & Michigan stock, and this, together with that already held and subsequently acquired, gave the C., H. & D. a majority control. Curiously enough this bonus stock was never entered on the C., H. & D. books and the entire proceeds from its sale in 1887 were credited to profit and loss. This lease, as modified June 23, 1870, is still in effect. Under it the C., H. & D. was required to pay operating expenses, taxes, interest. organization expenses, etc.; pay for improvements to the road and equipment; pay dividends of 8 per cent per annum on preferred stock; provide for the redemption, extension, or conversion into preferred stock of all maturing bonds; and pay a 3½ per cent dividend annually on "unpreferred" stock.

Although the modification of the lease entitled the C., H. & D. to the net earnings, the operations over the Dayton-Toledo line were not included in the income accounts on the latter's books until after September 30, 1872. No further change occurred for several years in the mileage directly operated by the parent road and covered in its own income accounts. Beginning in 1881, however, a number of additions to the system were made through stock control and lease, indicated by the following statement, which brought the total mileage directly operated on June 30, 1895, to 447.18 miles:

Year.	Subsidiary lines controlled through stock ownership.	Miles.
1881	McComb, Deshler & Toledo R. R., from Deshler to McComb	8.90
1887	Bowling Green R. R., from Tontogany to Bowling Green	5.55
1887	Piqua & Troy Branch R. R., from Troy to Piqua	8.64
1888	Columbus, Findlay & Northern R. R.,[1] from McComb to Findlay	8.80
1889	Cincinnati & Dayton Ry., from Hamilton to Middletown	13.38
1890	Bowling Green R. R.,[2] from Bowling Green to North Baltimore	15.00
1891	Cincinnati, Dayton & Ironton R. R.,[3] from Dayton to Ironton	184.05

[1] Reorganization of the McComb, Deshler & Toledo R. R. Extension to Findlay built, making total owned mileage 17.64.

[2] Line to North Baltimore purchased from Toledo, Findlay & Springfield Ry., making total owned mileage 20.55. Operations over the Bowling Green-North Baltimore line commenced by C., H. & D. on December 1, 1890.

[3] Also leased under agreement dated May 1, 1891, on which date C., H. & D. began operations. Mileage includes 20 miles of trackage rights over other lines.

The addition in 1891 of the Cincinnati, Dayton & Ironton Railroad was one result of the settlement of the financial difficulties into which the C., H. & D. was thrown through its exploitation by Henry S. Ives. Further facts as to that exploitation are presented in Appendix 8. In the settlement of those complications the C., H. & D. acquired a majority of the stock of the Dayton, Fort Wayne & Chicago Railway. That road extended from Delphos, Ohio, through Dayton to Deans, Ohio, and thence had trackage rights into Ironton, Ohio. Its corporate history may be traced back into the Toledo, Cincinnati & St. Louis Railroad system in the abridged corporate history chart, Appendix 3. Information as to the financial history of this Delphos-Ironton line is fragmentary, but the facts available indicate that it was never financially strong. The Dayton, Fort Wayne & Chicago was thrown into receivership on March 19, 1888, and when sold at foreclosure in February, 1891, was taken over by two companies organized by the C., H. & D., the one, the Cincinnati, Dayton & Ironton Railroad, acquiring the line from Dayton to Ironton, 184.05 miles, and the other, the Cincinnati, Dayton & Chicago Railroad, acquiring the then narrow-gauge line from Dayton to Delphos, 95.70 miles. The C., H. & D. owned the entire capital stock of both companies, although not carried as stocks on its books, and conducted their operations. No separate books of account were kept for them. In the case of the Cincinnati, Dayton & Ironton the operating results were embraced in the income accounts of the C., H. & D., but the operating results of the Cincinnati, Dayton & Chicago were cleared to an open account. An issue of $3,500,000 of first mortgage bonds was made in the name of and on the property of the Cincinnati, Dayton & Ironton, and these too were written on the books of the C., H. & D. as later explained. These two companies were consolidated with the C., H. & D. in 1895 to form the present company.

The operations of the C., H. & D. proper up to June 30, 1895, must be presented in two statements, owing to the absence from its files of

certain primary record, covering its earlier years. We give first a statement for the three and one-half years from October 1, 1851, to March 31, 1855, prepared from the company's reports to stockholders, of the operations over the 60 miles from Cincinnati to Dayton:

Income account, October 1, 1851–March 31, 1855.

Gross earnings	$1,365,649.61	
Operating expenses	571,692.68	
Net revenue from railway operations		$793,956.93
Taxes		36,350.34
Railway operating income		757,606.59
Rents	34,632.03	
Profit and loss account	48,395.61	
Total nonoperating income		83,027.64
Gross income		840,634.23
Interest account and interest on bonds	186,540.67	
Loss on running steamboat	16,308.71	
Total deductions from gross income		202,849.38
Net income		637,784.85
Dividends declared		[1] 438,816.37
Transferred to reserve fund		[2] 197,968.48

The next statement is based on the company's accounting records and represents only the operations over the mileage of the C., H. & D. proper from April 1, 1855, up to October 1, 1872; over the mileage of the C., H. & D. and Dayton & Michigan from Cincinnati to Toledo from the latter date up to 1881; and thereafter also over the new mileage acquired from time to time as indicated in the statement at page 71, *ante*.

Income account, April 1, 1855–June 30, 1895.

Gross earnings	$73,520,541.28	
Operating expenses	44,408,486.07	
Net revenue from railway operations		$29,112,055.21
Taxes and insurance		2,746,615.69
Railway operating income		26,365,439.52
Rents	2,320,630.67	
Mileage, net	378,879.99	
Interest and exchange, net	163,315.57	
Miscellaneous items	1,470,729.28	
Total nonoperating income		4,333,555.51
Gross income		30,698,995.03

[1] The carrier's books of account record dividends of $440,780.66 for this period. Explanation of difference not available.

[2] A difference of $1,000 in published figures not accounted for.

Rent for lease of road	$7,799,775.70	
Interest on funded debt	6,861,127.08	
Miscellaneous items	788,432.63	
Total deductions from gross income		$15,449,335.41
Net income		15,249,659.62
Sinking funds		66,180.00
Dividends declared		7,323,141.81
Income balance, transferred to credit of profit and loss		7,860,337.81

The $1,470,729.28 of miscellaneous items in nonoperating income includes $594,000 which the carrier credited in the year ended March 31, 1865, on account of unpaid coupons on Dayton & Michigan bonds received by the C., H. & D. under the terms of its lease of the former. This credit more properly belongs in the profit and loss account.

The foregoing statements show that the C., H. & D. was a profit maker from the very beginning. Including $105,000 charged to profit and loss, dividends amounting to $7,868,872.47 were disbursed, as shown in Appendix 9, and an approximately equal amount was transferred from income to the credit of profit and loss. The latter account also received credits up to June 30, 1895, as follows:

$454,000, interest allowed on advances to the Cincinnati, Hamilton & Indianapolis Railroad from 1880 to 1893, as later explained;

512,000, representing $249,000 of profit from the sale of Cincinnati, Richmond & Chicago Railroad stock and $263,000, representing principally net accumulations of surplus from the operation of that line by the C., H. & D. from 1866 to 1889;

700,000, receipts from the sale of the 20,000 shares of bonus Dayton & Michigan Railroad stock, acquired as previously explained.

The principal charges to profit and loss up to the consolidation of 1895 were:

$150,000 of interest on C., H. & D. general mortgage bonds, later referred to;
307,000 of discounts and commissions on securities issued;
2,235,000 loss of deposits with Henry S. Ives & Company, later explained;
105,000 of dividends;
198,000 of interest and exchange;
308,000 depreciation in stocks owned.

Allowing for sundry minor items, the credit balance in profit and loss on June 30, 1895, was $6,189,486.46.

The amount of this surplus, by far the greater part of which was accumulated prior to 1891 from the operation of 265 miles of line and less, raises the question as to why the stockholders did not receive even more generous cash distribution of profits. A further study of the company's accounts answers that question.

The C., H. & D. for years had been carrying among its stated assets an accumulation of its advances to the Cincinnati, Hamilton

& Indianapolis Railroad, a proprietary line extending from Hamilton to Indianapolis, Ind., 98 miles. At Indianapolis an important connection for Chicago business was maintained with the Chicago, Indianapolis & Louisville Railway Company. The C., H. & D. had acquired absolute control of the Cincinnati, Hamilton & Indianapolis at the latter's organization in 1872, had guaranteed the principal and interest of $2,500,000 of its first mortgage bonds, and had operated its line as a part of the system since that time. The results of such operations, however, were not carried into the income accounts of the C., H. & D. but were cleared on the latter's books to an open account between the two companies. This included also advances for construction and other charges. Up to June 30, 1895, the deficits on the Cincinnati, Hamilton & Indianapolis amounted to $2,466,822.74. This included interest on advances, delayed items carried into profit and loss, and $133,500 of interest accrued to June 30, 1895, on certain bonds of the Cincinnati, Hamilton & Indianapolis which the C., H. & D. through its control of the subsidiary road had caused to be voted to itself in part repayment of certain of said advances and interest thereon.

This latter transaction constituted a most flagrant abuse of corporate powers in funding operating deficits and interest charges. Between June, 1893, and August, 1898, $2,000,000 of general mortgage bonds of the Cincinnati, Hamilton & Indianapolis were voted by its board of directors to the C., H. & D. in part repayment of the former's debts to the latter, stated to aggregate $2,026,841.40. Analyses of the accounts show that of this sum only $219,524.19 had been advanced by the C., H. & D. for construction and like purposes. The balance, excepting $1,847.99 unaccounted for, consisted of $1,063,710.20 of deficits in income accumulated between January 1, 1880, and June 30, 1897; $474,759.02, of interest on said advances for construction and deficits; and $267,000, representing the interest which accrued during the four years, 1893 to 1897, on $1,335,000 of these same Cincinnati, Hamilton & Indianapolis general mortgage bonds, being the block first issued in 1893. The C., H. & D. being in complete control of the subsidiary company, was responsible for this capitalization of deficits and interest as described.

It has been previously stated that the C., H. & D. conducted the operations of the Cincinnati, Dayton & Chicago Railroad, the Dayton-Delphos line, and owned its entire capital stock. The results of those operations were not included in the income accounts of the C., H. & D. but were cleared on the latter's books to an open account between the two companies. For the four years 1891 to 1895 the operations resulted in losses of $141,856.84.

Another loss carried on the books of the C., H. & D. as an asset was an accumulation of $383,515.64 of advances made up to July, 1888, as its portion of unearned interest on bonds of the Cincinnati, Richmond & Fort Wayne Railroad, due under an agreement dated June 1, 1871. While this asset was probably retained on the company's books in anticipation of possible repayment, no such repayment was made up to 1895, and in June, 1911, the account was charged off to profit and loss.

But much the most serious losses suffered by the C., H. & D. up to the 1895 consolidation were those resulting from the exploitation of the property by Henry S. Ives in 1886 and 1887. Unfortunately the company's accounts and records do not yield all the facts necessary to construct a satisfactorily complete and connected story of Ives's manipulations, of the financial difficulties into which he plunged the C., H. & D., and of their ultimate adjustment. Such facts as could be assembled are set out in Appendix 8. It is now impossible to ascertain even approximately what the net losses were. That they were very substantial is evident. In part, to the amount of $2,235,000, they were charged off to profit and loss prior to 1895, as previously stated, but other items representing ultimate losses were still carried on the books at the time of the consolidation.

In addition to the foregoing there was another class of expenditure which necessarily restricted cash dividend payments. We refer to outlay on subsidiary lines, made, as a rule, for additions and improvements. For example, over $1,000,000 had been advanced to the Dayton & Michigan to June 30, 1895, practically all of which was not subject to repayment.

From the foregoing it is evident that there were abundant reasons why larger cash dividends had not been paid prior to 1895. The same facts warrant the conclusion that the surplus as then recorded on the books was largely fictitious.

On June 30, 1895, the following capital was outstanding in the hands of the public against the C., H. & D. and its two subsidiary lines, the Cincinnati, Dayton & Chicago Railroad and the Cincinnati, Dayton & Ironton Railroad, which three companies were then in process of consolidation:

Capital stock:	
Common C., H. & D.	$4,000,000
Four per cent guaranteed preferred C., H. & D:	
Series "A" and "B"	1,000,000
"Eagle" series	742,100
Mortgage bonds:	
C., H. & D. consolidated sinking fund bonds, due 1905—	
5 per cent	394,000
6 per cent	1,340,000
7 per cent	996,000

Mortgage bonds—Continued.

C., H. & D. second mortgage 4½ per cent bonds, due 1937	$2,000,000
C., H. & D. general mortgage 5 per cent bonds, due 1942	3,000,000
C., D. & I. first mortgage 5 per cent bonds, due 1941	3,500,000
Miscellaneous obligations: Real estate mortgages	6,000
Nonnegotiable debt to affiliated companies: Call loans	130,000

Complete information is not available from the company's records as to the proceeds from these issues and the use made thereof. Of the common stock, $500,000 was used to retire an equal amount of an early issue of bonds and $1,054,100 was put out at various times as stock dividends. The $1,000,000 of series "A" and "B" preferred stock was sold at par for cash. Holders were denied voting rights. This stock originally bore guaranteed dividends of 6 per cent, but in 1886 the stockholders accepted a reduction in rate to 4 per cent in preference to redemption of their stock at par in cash. The so-called "Eagle" preferred stock bore 4 per cent guaranteed dividends and was also denied voting rights. It had been issued largely to redeem spurious stock put out by the Ives management, as stated in Appendix 8. No stocks for the Cincinnati, Dayton & Ironton and the Cincinnati, Dayton & Chicago are included in the statement, for the reason that no books were kept for them and their stocks were not carried on the books of the C., H. & D. as its liability. Indeed, the latter did not record specifically the ownership of said stocks, although the record shows that it did own the entire issue of both companies, $5,000,000 of the Cincinnati, Dayton & Ironton and $4,000,000 of the Cincinnati, Dayton & Chicago. The $3,500,000 of Cincinnati, Dayton & Ironton bonds were issued in 1891, and were guaranteed principal and interest by the C., H. & D., which, though not formally assuming said bonds, wrote them on its books as a liability and merged the proceeds with its own resources. The $3,000,000 of C., H. & D general mortgage bonds are included in the foregoing statement because they were issued under a mortgage dated June 1, 1892, and had all been sold prior to June 30, 1893, although neither the liability therefor nor the proceeds therefrom were recorded in the company's accounts until June, 1896. Apparently the proceeds were held in New York by certain trustees, so called, but the company's records do not disclose the identity of those trustees nor the use they made of the funds during this four-year period. These circumstances direct attention to the disposition of an item of $184,992.75 which, when the accounting for this bond issue was made, was charged up as cost of road and equipment. This is covered more fully later on. The company's records do not show that any interest on these funds accrued to its credit during the time they were held by the trustees. Although not on the books until June, 1896, the prin-

cipal of these bonds was included in the statement of funded debt in the company's report to this Commission for the year ended June 30, 1893, and subsequently.

It was during the closing days of the corporate existence of the Cincinnati, Hamilton & Dayton Railroad Company, i. e., in May and June, 1895, that authority was voted for the acquisition of a half interest, joint and equal with the Southern Railway Company, in what finally became the Southwestern Construction Company, controlling the Cincinnati, New Orleans & Texas Pacific and Alabama Great Southern, which, with dependent companies, constitute the through line from Cincinnati to New Orleans known as the "Queen and Crescent route." As a part of the arrangements an agreement was entered into by the roads interested providing for the preferential interchange of traffic between them. This holding of the C., H. & D. has always been looked upon as one of its substantial assets.

There follows a general balance sheet as of June 30, 1895, for the C., H. & D. proper. The 1896 figures are also shown comparatively for convenience in following the discussion of the changes occasioned by the consolidation which is next taken up.

Cincinnati, Hamilton & Dayton.

GENERAL BALANCE SHEET AS OF JUNE 30, 1895 AND 1896.

Assets.	1895	1896
Investment in road and equipment	$10,223,107.26	$21,570,261.89
Miscellaneous physical property	10,000.00	....
Investments in affiliated companies:		
(a) Stocks	445,171.49	897,100.32
(b) Bonds	2,330,159.60	2,335,000.00
(d) Advances	3,491,421.79	1,253,884.61
Other investments:		
(a) Stocks	1,111,550.00	533,482.29
(b) Bonds	4,000.00	4,000.00
(d) Advances	4,601.12	....
(e) Miscellaneous	500.00	500.00
Total investments	17,620,501.66	26,594,218.52
Cash	99,350.58	2,463,176.86
Special deposits	270,669.22	420,670.19
Loans and bills receivable	114,489.77	8,889.77
Net balance receivable from agents and conductors	176,216.85	191,476.24
Miscellaneous accounts receivable	126,225.41	129,748.13
Material and supplies	182,209.15	166,582.96
Other current assets	144.60	446.12
Total current assets	968,725.59	3,370,990.28
Working fund advances	11,144.71	*16,975.89*
Other deferred assets	407,060.94	353,515.64
Total deferred assets	418,205.65	368,540.35
Other unadjusted debits	3,202,946.18	345,826.39
Total unadjusted debits	3,202,946.18	345,826.39
Total	22,210,379.08	30,677,575.54

Cincinnati, Hamilton & Dayton—Continued.

GENERAL BALANCE SHEET AS OF JUNE 30, 1895 AND 1896—Continued.

Liabilities.	1895	1896
Capital stock:		
Book liability at date [1]	($5,742,100.00)	($16,000,000.00)
Held by or for carrier at date		
Actually outstanding at date	5,742,100.00	16,000,000.00
Total stock	5,742,100.00	16,000,000.00
Funded debt unmatured:		
Book liability at date [1]	(4,736,000.00)	(11,228,000.00)
Held by or for carrier at date		
Actually outstanding at date	4,736,000.00	11,228,000.00
Nonnegotiable debt to affiliated companies:		
(a) Notes	130,000.00	142,000.00
Total long term debt	4,866,000.00	11,370,000.00
Loans and bills payable	609,602.30	753,500.00
Audited accounts and wages payable	562,901.41	610,376.96
Miscellaneous accounts payable	44,670.60	44,976.71
Interest matured unpaid	159,961.09	310,716.09
Dividends matured unpaid	51,253.75	1,565.92
Unmatured dividends declared	12,473.66	11,740.00
Unmatured interest accrued	116,621.67	129,059.17
Unmatured rents accrued	113,397.00	113,397.00
Other current liabilities	68,873.61	68,230.84
Total current liabilities	1,739,755.09	2,043,562.68
Other deferred liabilities	[2] 3,500,000.00	
Total deferred liabilities	3,500,000.00	
Other unadjusted credits	129,829.03	16,970.07
Total unadjusted credits	129,829.03	16,970.07
Sinking fund reserves	43,208.50	65,067.75
Profit and loss—balance	6,189,486.46	1,181,975.04
Total corporate surplus	6,232,694.96	1,247,042.79
Total	22,210,379.08	30,677,575.54

[1] Memorandum only; not included in total.
[2] Represents Cincinnati, Dayton & Ironton R. R. Co. first mortgage bonds.

II. CINCINNATI, HAMILTON & DAYTON RAILWAY, 1895–1904.

It has already been stated that the present corporation, the Cincinnati, Hamilton & Dayton Railway Company, was formed by the consolidation of the Cincinnati, Hamilton & Dayton Railroad Company, The Cincinnati, Dayton & Ironton Railroad Company, and The Cincinnati, Dayton & Chicago Railroad Company. The system was then in the control of what was known as the Shoemaker-Woodford management. This consolidation was effected under the terms of an agreement dated June 6, 1895. The organization of the new company was completed on July 30 by the adoption of regulations and the election of directors.

Under the terms of the consolidation agreement the new company was to issue $8,000,000 of common and $8,000,000 of preferred stock in shares of $100 par value. The new preferred was to carry equal voting rights with the common and the right to noncumulative dividends up to 5 per cent per annum before any could be paid on

subsidiary previously mentioned, and $8,000 was held by the secretary-treasurer, as trustee, until February, 1905, when it was sold under circumstances of peculiar interest, as related at page 123 of this report.

No property was added to the C., H. & D. by this consolidation of 1895. The original C., H. & D. had acquired its interest in the Dayton, Fort Wayne & Chicago, the predecessor of the Cincinnati, Dayton & Ironton and the Cincinnati, Dayton & Chicago, in the settlement of its financial difficulties incident to the Ives maladministration. It owned the entire capital stocks of those two successor companies. The original investment of the C., H. & D. in the Delphos-Ironton lines, therefore, had already been made and recorded on its books, together with its subsequent expenditures for improving those lines. The consolidation merely effected a change in the title to the several lines, the new corporation acquiring the 318 miles listed below, all in Ohio:

	Miles.
Cincinnati to Dayton	60
Delphos to West Junction	190
Byers Junction to Dean	47
Ironton Junction to Wellston	3
Wellston to Buckeye furnace	8
Various branches	10

The new C., H. & D. also continued the control and operation of the following subsidiary lines:

	Miles.
Columbus, Findlay & Northern R. R., Deshler to Findlay	17.64
Bowling Green R. R., Tontogany to North Baltimore	20.55
Piqua & Troy Branch R. R., Troy to Piqua	8.64
Cincinnati & Dayton Ry., Hamilton to Middletown	13.38
Dayton & Michigan R. R., Dayton to Toledo	140.72

With 22.46 miles of trackage rights the total mileage directly operated by the new company on June 30, 1896, aggregated 541.38 miles, single track. It also continued to operate the line between Hamilton and Indianapolis owned by its subsidiary, the Cincinnati, Hamilton & Indianapolis Railroad, but, as to it, the operating accounts continued to be cleared to an open account between the two companies and were not merged into the income of the parent road.

The new C., H. & D. did not open new books of account but continued those of the original C., H. & D. Indeed, no adjustment of accounts in consequence of the consolidation was made until June of the following year, 1896. Then all such adjustments, except minor ones occasioned by subsequent exchanges of stock, were made in two journal entries. These included many items entirely unrelated to the consolidation and served to close out a number of matters without undue stress upon their significance.

One of the two entries is entirely barren of information from which to definitely determine its disposition of forty-odd different accounts involved. The entry is merely a list of the debits and credits to those accounts, introduced by the nonilluminating statement—

For amount of the following accounts transferred by order of M. D. Woodford, Pres.

Nor is the lacking information available from other records of the company. But it seems clear that the simple plan was adopted of computing the balance between the aggregate of credit items and the aggregate of debit items, and then charging that balance to the old "construction" account.

The second journal entry cleared this account and several others into a new account named "cost of road and equipment," which was thus opened with an aggregate charge of $19,682,304.95. The following statement shows in general terms the nature of the items embraced in this total so far as can be ascertained from the data available. The sum represented nearly two-thirds of the total assets of the new company on June 30, 1896.

(A) $10, 267, 900. 00, the difference between the capital stock accounts set up for the new company, $14,894,700, and the amounts written out of the capital stock accounts of the old company to date, $4,186,800. This difference represents $67,900 of new preferred treasury stock later disposed of, as explained at page 79, and $10,200,000 inflation in stock contemplated in and effected by the consolidation.

(B) 3, 489, 899. 01, the balance on June 30, 1895, in the equipment account of the original C., H. & D., here closed out.

(C) 4, 548, 482. 58, representing $4,540,812.49, the balance on June 30, 1895, in the construction account of the original C., H. & D., here closed out, plus $7,670.09, unexplained.

(D) 909, 219. 25, representing $688,600.52 transferred from the old "real estate" account plus $220,618.72, being balances on June 30, 1895, in other accounts apparently covering investments in real estate, here closed out.

(E) 3, 763, 268. 98, composed of the following:

Betterment expenditures on the Cincinnati, Dayton & Chicago	$146, 691. 96
Construction and equipment expenditures on the Cincinnati, Dayton & Ironton	1, 078, 422. 23
Liquidation of receiver's certificates and of various claims, etc., against the Dayton, Fort Wayne & Chicago	869, 818. 06
Sundry disbursements in settlement of various Ives matters and of claims, etc., against Dayton, Fort Wayne & Chicago	1, 672, 841. 56

(F) $1,808,128.89, net of sundry items covered by the two adjustment entries, which, under ordinary accounting practice, would have been cleared to the surplus account.

The principal debits are:

Cash disbursements and "Eagle" preferred stock used to redeem bogus stock put out during Ives régime	$702,418
Discount on C., D. & I. bonds	278,690
Interest, commissions, and expenses in sale of C., D. & I. bonds	88,484
Cash disbursements made in Ives régime in purchase of T. H. & I. stock, now written off	889,500
Deficits from C., D. & C., 1892–1895	142,507
Discount on C., H. & D. general mortgage bonds	115,000
Sundry old asset accounts written off	158,889

The principal credits are:

Arbitrary increases in book value of various securities to par	117,527
Writing off "suspended income account"	127,645
Opening of account to record ownership of common stock of Cincinnati, Hamilton & Indianapolis	221,776
Opening of new account, "C., F. & N. common stock"	85,700

(G) 184,992.75, unexplained item connected with handling of proceeds from C., H. & D. general mortgage bonds by certain trustees.

24,911,891.41

Less 5,229,586.46, net amount written out of surplus account accumulated to June 30, 1895, by original C., H. & D.

19,682,304.95

Many of the items in the foregoing schedule are self-explanatory, but some have a further special significance. Those included under E represent, as nearly as can be determined, the maximum amount invested by the original C., H. & D. in the Cincinnati, Dayton & Ironton and the Cincinnati, Dayton & Chicago. In the last item of that group, however, are included amounts which would be differently assigned if all the details respecting them were available. Expenditures in connection with the Ives manipulations covered not only the acquisition of the property named but also the retirement of bogus stock issued during his control, and the settlement of claims of a varied character growing out of all those complications, described in Appendix 8. In such settlements there were acquired other assets entirely unrelated to the Cincinnati, Dayton & Ironton and the Cincinnati, Dayton & Chicago. Many of the expenditures represented expenses or losses, properly chargeable only against

profit and loss. It has been possible to segregate some items of this latter class, and these are included in F, but only such items as clearly fall within the scope of the descriptive heading. Substantial amounts would be added to this latter group if the details of the various accounts were available in full.

The fourth item under F represents the closing out of an account to which had been charged cash disbursements apparently incident to the effort of the C., H. & D. during the Ives régime to acquire control of the Terre Haute & Indianapolis Railroad. This disposition of the account would indicate an outright loss of these expenditures, another of the very heavy losses suffered by the C., H. & D. by reason of the Ives control. Another item of special interest in the same group is the next to the last. This represents the offset to the opening of a new account recording the ownership by the C., H. & D. of the entire issue of common stock of one of its subsidiary companies, the Cincinnati, Hamilton & Indianapolis. This stock had been owned since 1872 but had never before been entered on the books. The management embraced this opportunity to write up the asset, requiring an offsetting credit as shown. The amount $221,776 is just 10 per cent of the par value of the stock issued. This stock was not written on the issuing company's books until June, 1897. Under G is shown an amount which, through these entries, was added to the carrier's cost of property without a word of explanation. It forms a part of the accounting for the $3,000,000 of C., H. & D. general mortgage bonds, the issuance of which in 1892–93 has already been mentioned.

On June 30, 1895, the "surplus earnings" account of the C., H. & D., which was its profit and loss account, carried a credit balance of $6,189,486.46. By these two adjustment entries of June, 1896, $5,229,586.46 of this was used to reduce the charges to the new "cost of road and equipment" account. Then $902,400 of the old surplus was formally transferred to the credit of the new company's profit and loss. This left $57,500 of the old surplus unaccounted for, and this amount also was evidently allowed to lap over, without formal transfer, into the profit and loss of the new company. The reason for thus starting off the new company with a surplus of $959,900 from one of its predecessor companies has not been disclosed.

On its own merits, but also because of the fictitious value placed on the common stock in the 1904 transactions, to be dealt with later, the inflation of capital by over $10,000,000 through this consolidation deserves special consideration. The adjustment entries do not even hint at additions and betterments made from income of previous years. As previously emphasized, no new property whatever was acquired in this consolidation. All of the investments by the C., H.

& D. in the lines consolidated had been made some time previously and were already recorded among its assets. Apparently there remain but two other possible grounds of extenuation, first, that the increase of capital was merely a method of distributing the accumulated profits of the company; and, second, that it was merely a capitalization of the actual value of the Cincinnati, Dayton & Ironton and Cincinnati, Dayton & Chicago over and above the amounts expended therefor.

We have already commented upon the largely fictitious character of the surplus, recorded as accumulated to June 30, 1895. To summarize the foregoing it may be said that the real surplus available for capitalization can only be reached by eliminating the following items:

$2,466,822.74 of deficits, which had accumulated to June 30, 1895, on the Cincinnati, Hamilton & Indianapolis, as shown at page 74. Since the C., H. & D. was practically the owner of this line the deficits were really its own deficits, despite the fact that the parent road had caused the subsidiary company to issue bonds to the former in part reimbursement for said deficits.

883,515.64 of advances, which had been made by the C., H. & D. to July, 1888, in part payment of unearned interest on bonds of the Cincinnati, Richmond & Fort Wayne. This sum was carried among C., H. & D. assets but was never realized on, being finally charged off to profit and loss. See comments on page 75.

1,808,128.89 of sundry profit and loss items which were thrown into property account by the adjustment entries of June, 1896, as shown on page 82.

959,900.00 of the accumulated surplus to June 30, 1895, which was carried over to the credit of the new company, see page 83.

These eliminations from the book surplus of $6,189,486.46 would leave only about a half million of dollars available for capitalization. This latter amount is certainly a maximum, in view of the fact that many other items would be included under F of the schedule on page 82 if complete details were available to definitely establish the proper classification. As to the possible excess in value of the Cincinnati, Dayton & Ironton and Cincinnati, Dayton & Chicago over the C., H. & D.'s investment therein, it must again be stated that the lack of necessary data prevents an estimate of their cost. From the standpoint of earning value, however, the indications are all to the effect that after allowing for a fair return on the investment, but little if any net revenue remained to support additional capitalization.

The record supports the conclusion that there was not even an excuse for inflating the capital of the C., H. & D. by $10,200,000 in 1895.

The new company assumed all the obligations of the three predecessors. A general balance sheet showing the 1895 and 1896 figures is given at pages 77–78, and from this the changes due to the consolidation may be read in a general way. It should be noted that the $3,500,000 of Cincinnati, Dayton & Ironton bonds were not classed as funded debt in 1895 for the reason that, while the C., H. & D. had guaranteed the bonds, it had not formally assumed them as its own liability. Also, in connection with the discussion above regarding the $19,682,304.95 charged to the new "cost of road and equipment" account, it should be said that this amount embraced items already on the books and which are classified in the 1895 figures as "investment in road and equipment." The latter account was really increased by only $11,347,144.04, and this figure includes regular construction charges during the year to June 30, 1896, subsequent to the consolidation.

The story of the new C., H. & D. after its formation in 1895 may be best told by considering next as a whole the period up to the summer of 1904 when the control which had been exercised by the Shoemaker-Woodford interests was surrendered to the syndicate, the operations of which and of its successors in power turned the prosperous property into a financial wreck.

The lines directly operated by the new company and covered in its own income accounts during this period consisted of the 541.38 miles as previously described and two later additions. The first of these was 2.46 miles, located in Dayton, serving the National Military Home. This was leased in perpetuity on June 29, 1897. The second addition was the 80.74 miles, including 0.55 mile of trackage rights of the Findlay, Fort Wayne & Western Railway, extending from Findlay, Ohio, west to Fort Wayne, Ind., and crossing the C., H. & D. at Ottawa, Ohio. The C., H. & D. assumed operation of this line on November 1, 1901, under a temporary agreement with the security holders, and earned net therefrom to June 30, 1903, $10,-291.56, which was added to the income of the operator through a miscellaneous account, and not by merging the operating accounts with its own. Upon foreclosure of this road in July, 1903, it was taken over by a newly organized company, the Cincinnati, Findlay & Fort Wayne Railway, and all the latter's stock, $1,250,000, was made over to the C., H. & D. in consideration of a guaranty by the latter of the principal and interest of the new company's bonds, aggregating $1,150,000. This stock the C., H. & D. carried at a nominal value. It acquired a 99-year lease of this line, dated November 1, 1903, and the results of the operations for the entire fiscal year 1904 and thereafter were merged with those of the lessee. To comply with Indiana laws an agreement dated October 12, 1906, effective

July 1, 1906, and another dated August 20, 1909, were executed to grant the C., H. & D. trackage rights on the 17.51 miles of this line in that state. It continued thereafter, however, in exclusive tenancy of the Cincinnati, Findlay & Fort Wayne. With these additions the operated mileage of the C., H. & D. on June 30, 1904, was 624.58 miles, single track.

The results of operating the mileage described during the nine years ended June 30, 1904, were very good. The minimum operating ratio was 63.3 per cent, the maximum 71.3 per cent, in 1904, and the average for the period 65.3 per cent. These results were not obtained at the expense of the property, for the record shows that the road and equipment were well maintained throughout the period, although toward its close the time was approaching when generally increasing standards would require large expenditures for heavier equipment and correspondingly stronger track and bridges. The operating results year by year are shown in condensed form in Appendix 5, and the aggregate for the entire period is given below:

Gross earnings from operation	$43, 753, 651. 76	
Operating expenses	28, 579, 304. 65	
Income from operation		$15, 174, 347. 11
Taxes		1, 349, 172. 96
Net income from operation		13, 825, 174. 15
Income from other sources		281, 871. 13
Total income		14, 107, 045. 28
Deductions from income:		
Rents paid for lease of road	$2, 896, 032. 97	
Miscellaneous rents	29, 019. 45	
Interest on funded debt accrued	5, 418, 065. 18	
Other deductions	17, 447. 33	
Total deductions from income		8, 360, 564. 93
Net income		5, 746, 480. 35
Appropriations of income:		
Sinking funds	*6, 050. 95*	
Dividends on preferred stock	3, 392, 527. 71	
Total appropriations of income		3, 386. 476. 76
Balance transferred to credit of profit and loss		2, 360, 003. 59

The dividends of $3,392,527.71 represent the regular accruals on preferred stock. In addition a 2 per cent dividend was declared on the common and charged to profit and loss in December, 1903. Of this more will be said later. This dividend record and the accumulation of $2,360,003.59 additional surplus indicate the prosperous condition of this period. The results for these years are not marred by any failure of the lines west of Hamilton to earn

their own way, for the record shows that the Cincinnati, Hamilton & Indianapolis, from July 1, 1895, to August 31, 1902, earned $29,002.94 net; the newly acquired Indiana, Decatur & Western, from January 1, 1896, to August 31, 1902, earned $281,935.26 net after making adjustment of the erroneous disposition in its accounts of equipment rentals and interest on equipment notes; and the Cincinnati, Indianapolis & Western, the successor of these two, from September 1, 1902, to June 30, 1904, earned $294,120.97 net.

A number of important changes affected the lines west of Hamilton during this period. A conditional ownership and control of the then newly organized Indiana, Decatur & Western Railway, owning the line from Indianapolis to Decatur, Ill., some 152 miles, was acquired in the fall of 1895 by parties representing the controlling interest in the C., H. & D. The C., H. & D. assumed active management of the new company on January 1, 1896, although it was not until June, 1897, that formal authority was voted for its acquisition of control through the purchase of the entire capital stock of the new company. Separate books of accounts were kept for the Indiana, Decatur & Western covering both capital and operations. Under an agreement dated February 4, 1899, the Indiana, Decatur & Western purchased outright the north and south line from Sidell, Ill., to West Liberty, Ill., 78 miles, and thence by 8 miles of trackage rights reached Olney, Ill. Payment therefor was made in $933,000 of its first mortgage bonds. An interesting feature of this transaction was that the holder of the bonds agreed by the same contract to sell those bonds to the Cincinnati, Hamilton & Indianapolis for $475,000 in cash. Evidently the C., H. & D. furnished the cash, for it received the bonds from the Cincinnati, Hamilton & Indianapolis and, strangely enough, allowed the latter credit in open account for $448,670, representing the par of the bonds less the cash payment and less 1 per cent discount in the subsequent sale of the bonds. That sale was made at 99 contingent upon the indorsement of the bonds by the C., H. & D. with its guaranty of principal and interest.

Another addition to the Indiana, Decatur & Western was an extension of its line to Springfield, Ill., by the acquisition of trackage rights, 8 miles, from Decatur to Boody, Ill., and the purchase of the 34 miles then under construction from the latter point to Springfield under the terms of an agreement dated October 12, 1901. The cost of the new mileage was $105,201.77 in cash, $405,000 in par of first mortgage bonds, $900,000 in par of preferred stock, and $1,088,000 in par of common stock of the Indiana, Decatur & Western. This was manifestly a gross overissue of capital. Apparently the idea was to get out as much stock as possible in anticipation of the consolidation of the Cincinnati, Hamilton &

Indianapolis and the Indiana, Decatur & Western, then contemplated, and which is later described. On July 14, 1902, the executive committee of the C., H. & D. appointed a committee to arrange for the purchase of this stock. This committee reported on January 14, 1903, that the $1,988,000 of stock had been bought for $195,613.72 and converted into $2,438,000 in par of the stock of the new Cincinnati, Indianapolis & Western. The Boody-Springfield line purchase was not completed prior to the consolidation of 1902, so that it was not covered in the income results of the operations of the Indiana, Decatur & Western. Quite evidently this entire Indiana, Decatur & Western extension deal was an affair of the insiders then in control of the C., H. & D. system.

The first mortgage bonds of the Cincinnati, Hamilton & Indianapolis matured January 1, 1903. The C., H. & D. was guarantor of the principal and interest on the $1,800,000 of this issue held by the public. This was one cause, if not the primary cause, of the consolidation of the Cincinnati, Hamilton & Indianapolis and the Indiana, Decatur & Western, which was accomplished under an agreement dated August 1, 1902, and formed the Cincinnati, Indianapolis & Western Railway, already mentioned. The accounting for the two predecessor companies was closed as of August 31, 1902, and that for the new company began September 1, 1902. The C., H. & D. became the owner of all the stock of the new company, 71,158 shares, and continued its operation of the entire line. The accounts were kept separately, those covering operation being so carried up to June 30, 1905. The net income for 1903 and 1904 was declared a dividend and turned over to the C., H. & D. as such, but the 1905 results were cleared direct to the income of the parent road and so handled thereafter. The Cincinnati, Indianapolis & Western assumed the $3,162,000 of first mortgage bonds and $419,000 of equipment notes of the Indiana, Decatur & Western and issued $4,722,000 of its own first mortgage bonds to refund the debt of the Cincinnati, Hamilton & Indianapolis and for other purposes. The C., H. & D. guaranteed the principal and interest of this issue, it having similarly guaranteed the $933,000 previously mentioned of the $3,162,000 Indiana, Decatur & Western bonds. In the refunding process, the $2,000,000 of the general mortgage bonds of the Cincinnati, Hamilton & Indianapolis which had been issued to the C., H. & D. were redeemed at par in the new issue just mentioned. We have already shown that the C., H. & D. originally acquired the $2,000,000 of Cincinnati, Hamilton & Indianapolis bonds in the exercise of its complete control of that road by causing their issue to itself in repayment of debts of the subsidiary company representing mostly operating deficits and interest. This is worthy of emphasis, for the new bonds, thus seen to have been

based not on property but on deficits and interest, together with other bonds of the same issue separately acquired, were later sold to brokers at prices ranging from 92 to 95½, with an average price of 92.9 on 2,472 bonds.

Up to June 30, 1904, but few changes occurred in the capital stock of the new C., H. & D. and those were of a minor character, due to exchanges of stock already mentioned. Appendix 5 shows these changes and also the variations in the amounts of funded debt from year to year. For the single year 1898, $400,000 of notes appear in the latter class, having been put out in connection with the purchase of the stock of the Indiana, Decatur & Western. The following year $60,000 in real estate mortgages were issued. The most marked increase in funded debt was in 1901 when $1,200,000 of 4 per cent first mortgage bonds were added to the company's liabilities. These bonds had been authorized by one of the predecessor companies, the Cincinnati, Dayton & Chicago, in 1892, but had never been marketed. The application of the proceeds thereof can not be traced. In 1901 also a decrease of $130,000 occurred in outstanding bonds of an earlier issue. It is noteworthy that on June 30, 1904, the company's books recorded but $17,000 of loans and bills payable outstanding.

In the main, the increases to be noted in Appendix 5 in the property accounts represented actual acquisitions, although there are included therein certain items which, according to the classification now prescribed by this Commission, were erroneously assigned thereto. Such items, up to June 30, 1904, aggregated $352,093.23, net.

Reference has already been made to a 2 per cent dividend on common stock amounting to $160,000, which was declared in this period and charged to profit and loss. This dividend was paid in December, 1903, and therefore should have been shown in the company's annual report to this Commission for the year ended June 30, 1904. It was not shown in the report for that year or in any other report; in fact the flat statement was made in the 1904 report that no dividend on common stock had been declared in that fiscal year. When that report was compiled and presented the management was in the hands of the syndicate which succeeded the Shoemaker-Woodford interests. That the omission was willful and not accidental is shown by the fact that to conceal this falsification of returns further false entries were made in the 1904 report through arbitrary changes in certain 1903 figures required to be repeated therein. The report was attested by Eugene Zimmerman as president and Geo. W. Lishawa as auditor. When the Commission directed the attention of the C., H. & D.'s accounting officials to these changes in 1903 figures it received the following explanation: "Some changes were

made in 1903 figures, in order to dispose of items belonging in previous years, account of reorganization."

Because of the interest of J. P. Morgan & Company in C., H. & D. affairs subequent to 1904, it seems desirable at this point to say something of that firm's connection with the C., H. & D. in this earlier period. The dividend account covering the 2 per cent payment on C., H. & D. common in December, 1903, shows that of the $160,000 then disbursed, the sum of $47,178 was paid in five checks to Morgan & Company. This is the equivalent of the dividend on 23,589 shares, but the stock record of the C., H. & D. shows no common holdings whatever in the name of J. P. Morgan & Company. That record did show that the dividends on the following holdings had been paid by said checks to the order of J. P. Morgan & Company:

Stockholder of record.	Shares.
W. A. Hamilton	5,019
H. O. Smith	7,348
C. J. Walsh	5,000
J. H. Spohr	5,000
Thos. W. Joyce	1,222
Total	23,589

According to the testimony in this proceeding of a representative of the Morgan firm these shares had been acquired at different times in the year 1901 and were owned by it until the sale of 20,286 thereof in July, 1904, to the syndicate, as later described. In this latter transaction also the name of J. P. Morgan & Company never appeared as a vendor, but their stock was disposed of in the name of Henry F. Shoemaker. The same representative testified that while this stock was so held the firm had no representative on the C., H. & D. board, was not the fiscal agent of the company, and did not participate in any way in the conduct of its affairs.

It was during the latter part of the 1895–1904 period that a plan was conceived and considerable work was done toward obtaining coal traffic for the Dayton-Ironton branch to replace the coal from its local fields which were approaching exhaustion. This plan contemplated the construction of a low-grade extension from Gallia into Ironton, the bridging of the Ohio River at that point, and the control of extensive coal fields in Kentucky with a road to connect those fields with the new bridge. The story of this project and its outcome are told further on in a separate section beginning at page 148.

III. C., H. & D. COMMON-STOCK SYNDICATE, 1904.

During the period from July 7, 1904, to December 4, 1905, the C., H. & D. and Pere Marquette were very closely affiliated, both in control and operation, as a result primarily of the purchase by the

former of 110,000 shares of the common stock of the latter. This purchase was first formally authorized by the C., H. & D. board on July 7, 1904. It was consummated on the same day. Although strictly speaking that was the beginning of the control and the commingling of affairs, yet antedating occurrences must be considered in order to understand the reorganization of the C., H. & D. directorate and the resultant corporate acts of that day, of which this was one.

The story of the Prince syndicate of September 29, 1902, and its control of the Pere Marquette through to June 30, 1904, has already been told. It was testified before us by one of the promoters that the original idea of that syndicate was that the Pere Marquette should buy the control of the C., H. & D., but on account of strong opposition from certain large subscribers that plan was abandoned. The plan ultimately adopted and followed was that the C., H. & D. should purchase control of the Pere Marquette. Under this plan the promoters must first gain control of the C., H. & D. The capital stock of the latter amounted to $16,000,000 in par value, of which $8,700 was held in its treasury and $1,074,500 did not have voting rights. Thus 74,585 shares were needed for voting control.

In connection with the syndication of that stock, which will now be taken up, attention is directed to the fact that, as previously shown, all of the C., H. & D. common and a portion of the 5 per cent preferred represented water poured into the capitalization in the 1895 consolidation by which the company was formed.

1. *Organization and membership.*—To secure actual voting control it became necessary for the promoters to buy the 74,585 shares outright. The control then vested, as for many years previous, in what was known as the Shoemaker-Woodford management.

To accomplish their object the promoters organized a new syndicate, known as the C., H. & D. common-stock syndicate. Large subscriptions were necessary, and to obtain them the promoters pledged the C., H. & D. to the purchase of a controlling interest in the Pere Marquette; and they pledged the Pere Marquette and C., H. & D. to a guaranty of $3,650,000 of the bonds of a third carrier and its subsidiary, to purchase of the control of a fourth carrier, to trackage contracts, to express contracts, and to equipment contracts. Practically every subscription of size was bought with a price separate and distinct from any anticipated syndicate profits, which price was ultimately to be paid by one or the other or both of the carriers respondent. So seriously did these manipulations affect the financial stabilty of these carriers that a full statement of them will be made. The ostensible corporate acts of July 7, 1904, were done by officials who had, as individuals, interests in the syndicate or repre-

sented interests in the syndicate and who therefore abused their trusts for personal gain.

By May 5, 1904, preliminary plans had matured to a point where there was drawn up an instrument described as—

Memoranda for agreements between the local parties, the bankers, the voting trustees, the northern company, the southern company, and the local company,

and signed by L. B. Pierce, Newman Erb, F. H. Prince, Thos. H. Tracy, Jas. J. Robison, and Wm. Hardee. It is set forth in Appendix 10 and becomes intelligible if the following equivalents are read for the parties as therein described:

For the—	Read—
Local parties	Toledo-St. Louis parties.
Bankers	F. H. Prince & Co.
Northern company	Pere Marquette.
Southern company	C., H. & D.
Local company	Toledo Ry. & Terminal Co.

Tracy, Robison, and Hardee were of Toledo, and with Pierce, of St. Louis, representing the Commonwealth Trust Company of that city and a St. Louis syndicate, controlled the stock and bonds of the Toledo Railway & Terminal Company, the "terminal company," as it is designated herein. The Pere Marquette control was represented by Erb and Prince. The latter represented also his firm, F. H. Prince & Company. This memorandum agreement covered practically all the important features of the proposed, and ultimately effected, syndicate operations.

The formal agreement covering the creation of the C., H. & D. common-stock syndicate was dated May 19, 1904. It provided for the purchase of approximately 65,000 shares of the common stock and 10,000 shares of the preferred stock of the C., H. & D. at prices not exceeding $125 and $110 per share, respectively. By its provisions the subscribers appointed George W. Young, Dumont Clarke, and Valentine P. Snyder, of New York City, Lawrence B. Pierce, of St. Louis, and George H. Norman, of Boston, as syndicate managers and agents for the subscribers, and empowered the managers to contract for the purchase of said shares at the prices named and under such terms as the managers might deem expedient. This C., H. & D. syndicate agreement was not to be binding until subscriptions should be secured aggregating $8,125,000, the cost of 65,000 common shares at $125 per share. Not more than 30 per cent of the several subscriptions was to be called for within 30 days, and not more than 25 per cent additional within 8 months. The managers were empowered to borrow money to make payments due under any purchase contract, and to pledge purchased stock under such loans. The pre-

ferred stock might be sold at not less than par, any loss to fall upon the subscribers pro rata. The managers might add to their number, fill vacancies, and were entitled to expenses and reasonable compensation. It was further provided that they should deposit common shares, and might deposit preferred shares, under a voting trust agreement for five years, a majority of the voting trustees to be nominated by the managers and approved by a majority in interest of the subscribers. Additional shares of stock might be accepted by the voting trustees upon approval by a majority of their number. It was provided also that any subscriber in default on his subscription might be excluded from further participation in the transaction, in the discretion of the managers. Subscriptions were payable at the United States Mortgage & Trust Company in New York City.

To secure the shares requisite to the C., H. & D. control, an agreement dated May 28, 1904, hereinafter called the "vendors' agreement," was negotiated. The parties thereto were the "vendors," Henry F. Shoemaker, Eugene Zimmerman, and such other C., H. & D. stockholders as should execute the agreement; the syndicate managers, as already named; and the "trustee," the North American Trust Company. The vendors agreed to sell and the managers to purchase 65,000 shares of the common stock of the C., H. & D. at $125 per share and 10,000 shares of its 5 per cent preferred stock at $110 per share, a total of $9,225,000. Payments therefor were to be in cash, with interest at 4 per cent per annum on deferred payments. The agreement was to become effective when signed by the managers and the vendors and deposited with the trustee, whereupon, and not later than June 20, 1904, the latter was to give notice to the managers of its receipt. The first payment, $5,612,500, was to become due and payable not more than 18 days after the filing of such notice, and upon its payment the managers were to receive 10,000 shares of the preferred and 29,000 shares of the common stock. Between the time of its execution and the due date of the first payment, and after that until the second payment became due, the C., H. & D. board was not to authorize any acts other than those necessary in the usual conduct of its business, or to change in any way the character of the corporation, its shares or securities, or to incur any extraordinary obligations or any obligations except those incidental to its ordinary business. Finally, the vendors, at the time of the first payment, were to procure and deliver to the managers the resignations of 8 of the 13 directors of the C., H. & D. and aid in electing successors nominated by the managers. The voting power on the 36,000 shares of undelivered common stock was to remain with the vendors until the second payment. That payment, $1,100,000, became due 60 days after the making of the first, and thereupon 3,000 additional shares of common

stock and the voting power on the 33,000 remaining with the trustee were to be delivered to the managers. Contemporaneously the latter were to deliver to the trustee their executed promissory note for the amount of the last payment, $2,512,500, to be payable, with interest at 4 per cent, one year after the first payment, and to be secured by the 33,000 shares in the hands of the trustee. This note and its terms and conditions should then supersede the vendors' agreement as the expression of the rights of the syndicate managers and vendors.

The vendors who signed this agreement and the amounts of C., H. & D. stock which each agreed to sell were as follows:

	Shares common.	Shares preferred.
Henry F. Shoemaker	44,550	6,400
E. Zimmerman	12,000	2,400
Rush Taggart, by Henry F. Shoemaker	1,450	300
M. D. Woodford, by George R. Balch, attorney	7,000	900
Total	65,000	10,000

Included in Shoemaker's 44,550 common shares were 20,286 shares belonging to the firm of J. P. Morgan & Company, in whose behalf he had been authorized to sign, but in his own name.

The subscriptions to the syndicate aggregated only $8,125,000, just enough to meet the requirements for the purchase of 65,000 shares of common stock. The purchase of the 10,000 preferred shares was provided for otherwise, as follows: The arrangements prior to July 7, 1904, included a contract for sale of the preferred, immediately upon its acquisition, to Rudolph Kleybolte & Company, of Cincinnati and New York, at a price 10 points below its cost to the syndicate, the vendee agreeing to pay the purchase price of $1,000,000 on or before July 6, 1904, but not to require delivery until October 14, 1904. This contract did not provide specifically as to the exercise of the voting power in the stock meanwhile, but the obvious intention of the managers was to retain that power until final adjournment of the regular annual meeting of the C., H. & D. stockholders on October 11, 1904. This delivery of the preferred stock under this sale would have shorn the syndicate of the voting control of the C., H. & D. after October 14, 1904. Whether or not the retirement of the 5 per cent preferred stock which, as events transpired, was well under way before the latter date, was recognized as necessary before the plans of the C., H. & D. syndicate were completed does not definitely appear.

The aim of the promoters was, of course, to gain the contemplated voting control of the C., H. & D. as promptly as possible. Under the vendors' agreement such control could not pass until both the

first and second payments, requiring $6,712,500 of cash, were made to the vendors. But as not more than 30 per cent of the several subscriptions was to be called within 30 days from the effective date of the syndicate agreement, and not more than 25 per cent additional within eight months, the managers would be far short of the amount necessary for the first and second payments, even with the $1,000,000 available from the sale of the preferred. As it was finally worked out, the subscribers were called upon for the full 30 per cent, and $3,392,500 was borrowed by the managers, $2,500,000 from the United States Mortgage & Trust Company at 5 per cent per annum plus 3 per cent commission, secured by pledge of 32,000 shares of C., H. & D. common stock; $275,000 also from the United States Mortgage & Trust Company on 5 per cent notes indorsed by Newman Erb, L. B. Pierce, James J. Robison, Frederick H. Prince, Rudolph Kleybolte, and E. Zimmerman, and secured by the syndicate's equity in the same 32,000 shares; and $308,750 each from the Commonwealth Trust Company and the terminal company as advance payments on their respective subscriptions, 6 per cent interest thereon to be paid until such subscriptions became due.

The $2,500,000 loan by the United States Mortgage & Trust Company was participated in by some thirty-odd banks and individuals as indicated in Appendix 11, and was secured only by stock which, because of the circumstances recited, was of highly speculative value.

Under the original draft of the vendors' agreement the first payment became due 18 days after June 10, 1904. In the agreement as executed this latter date was changed to June 20 at the request of the vendees, as they were unable to secure sufficient subscriptions within the time limit. Eventually the date of July 6, 1904, was fixed for the first payments on the stock and the reorganization of the C., H. & D. board, but the board meeting on the 6th had to be adjourned to the day following because the managers had not made the required payment.

Before recounting the personnel of the new board of directors and the acts of its first and most memorable meeting, and further to emphasize the significance of those acts, it will be well to consider the make-up of the C., H. & D. syndicate and the influences which induced the subscriptions thereto. The following list takes into account various substitutions of subscriptions made subsequent to the underwriting as first certified to by the United States Mortgage & Trust Company on June 17, 1904:

Commonwealth Trust Company (of St. Louis)	$812,500
Toledo Railway & Terminal Company	812,500
Mark T. Cox	625,000
Vermilye & Company	625,000

F. H. Prince & Company	$537,500
George A. Fernald & Company	625,000
American Car & Foundry Company	625,000
A. S. White	6,250
Frederick Ayer	312,500
George H. Norman	312,500
Rudolph Kleybolte & Company	250,000
Newman Erb	187,500
Union Trust Company (of Detroit)	125,000
C. D. Simpson	62,500
Wm. L. Bull	62,500
H. C. Pierce	62,500
E. Zimmerman	531,250
J. S. Bache & Company	125,000
Eben Richards	250,000
C. A. Starbuck	125,000
Edward Tilden	187,500
E. N. Foss	62,500
Samuel R. Shipley	87,500
Provident Life & Trust Company (of Philadelphia)	312,500
Harvey Fisk & Sons, agents	312,500
C. K. Davis	62,500
Nathan S. Beardslee	25,000
Total	8,125,000

The subscription of Newman Erb for $187,500 was made for the following interests:

	On—
Newman Erb	$62,500
Louis Strasburger	25,000
Simon Rothschild	37,500
Street, Wykes & Company	62,500

Apparently William C. Miller paid the calls on the subscription of A. S. White for $6,250. It is of course possible that other subscriptions listed above may have been divided among other holders of beneficial interest.

The first two subscriptions were identical in interest. The second was for and on behalf of the Toledo Railway & Terminal Construction Company, hereinafter called the "construction company," which had constructed the belt line railway of the terminal company in and about Toledo, Ohio. The construction had been financed through the Commonwealth Trust Company, which, with the construction company, held complete control of the terminal company. Their substantial subscriptions, aggregating one-fifth of the total, were bought by the syndicate promoters for these considerations: (*a*) A pledge to provide purchasers, at par and interest, for the $3,500,000 of bonds issued by the terminal company and largely owned by the two subscribers, who had failed to find a market therefor up to that time; (*b*) a pledge that the initial cash payment on

the purchased bonds should be sufficient to meet the cash payment required on the subscriptions; (*c*) a pledge that the Pere Marquette and C., H. & D. would jointly and severally guarantee the payment of the principal and interest of said bonds, and also of $150,000 of the bonds of the Toledo Riverside Railway Company, a subsidiary; (*d*) a pledge that the two guaranteeing companies should accept the 5 per cent preferred cumulative stock of the terminal company in payment for any interest they might be obliged to pay under their guaranty; (*e*) a pledge that the Pere Marquette and C., H. & D. should enter into a joint and several agreement for the use of the tracks and terminal facilities of the terminal company; and (*f*) a pledge that the Toledo-St. Louis interests should have representation on the C., H. & D. board in proportion to their stock in the pool.

In connection with these two subscriptions, particular reference is made to the story of the financing and construction of the terminal company as related in Appendix 12. That tells in detail how two syndicates, one at Toledo and the other at St. Louis, first brought the terminal company into being; how, then, finding their holdings of its bonds unmarketable, they linked their fortunes in that venture with the C., H. & D. common-stock syndicate, making large subscriptions and loans to the latter in return for the promise of a market for their bonds at par; and how, finally, with their bonds marketed, and a hand in the control and management of both the Pere Marquette and C., H. & D., they sold their worthless bonus terminal company stock through the C., H. & D. to the Pere Marquette; and in the end distributed to their members, as profits in both ventures, almost $2,300,000. It is a story which deserves to be presented in the body of this report, but space necessities and the importance of avoiding a serious interruption in the continuity of the recital of the affairs of the Pere Marquette and C., H. & D. require that its details be presented in the appendix.

The preliminary agreements of the C., H. & D. common-stock syndicate provided that, with control established, the C., H. & D. should enter into a contract with the Pere Marquette for the reciprocal preferential interchange of traffic, and should contract with F. H. Prince & Company for the purchase of 100,000 shares of Pere Marquette common stock at a price of $125. This was much in excess of the price of $85 paid by the Prince syndicate, through which much of said stock had been assembled, and even more in excess of the actual market price of the stock, as shown in Appendix 13. The opportunity to market so advantageously a stock that had never paid a dividend except under the management of the Prince syndicate, and then only at the expense of maintenance to a very considerable degree, sufficiently accounts for several subscriptions to the C., H. &

D. syndicate, for the record shows the following subscribers to have held interest in the Prince syndicate at least to the extent indicated, although the record does not indicate exactly the number of those shares sold to the C., H. & D.:

	Pere Marquette common shares.
Mark T. Cox	5,000
F. H. Prince	20,000
F. H. Prince & Company	20,000
Frederick Ayer	4,500
Newman Erb	6,000
Provident Life & Trust Company	5,000

Mark T. Cox was head of the firm of Robert Winthrop & Company which later handled several equipment trust issues of the Pere Marquette and C., H. & D.

The subscription by Vermilye & Company for $625,000 was for and on behalf of the United States Express Company. Frank H. Platt, the general counsel and a director of the latter company, who conducted its negotiations in the matter, very frankly stated, as to the purpose of that subscription:

> It was to protect its business on the C., H. & D. road and to gain the Pere Marquette mileage. That was the inducing motive.

The subscription of George A. Fernald & Company for $625,000 was on behalf of certain stockholders of the Chicago, Cincinnati & Louisville Railroad. Wm. A. Bradford, jr., was the largest single stockholder, holding some 75 per cent of all outstanding. Fernald and his firm held several hundred thousand dollars. This road ran from Cincinnati to Griffith, Ind., some 254 miles, an extension on the north end of 41 miles from North Judson to Griffith and an extension on the south end of 46 miles from Cottage Grove, Ind., to Cincinnati having been opened for operation only a few months previously. The consideration for the Fernald subscription was the pledge that the Pere Marquette should purchase the entire issue of Chicago, Cincinnati & Louisville stock, $4,206,000, for $3,500,000 in Pere Marquette 4 per cent bonds, and that $500,000 additional of such bonds should be reserved for improvements on or equipment of that road. These bonds were to be issued under an indenture to the American Loan & Trust Company, of Boston, trustee, dated July 1, 1904, securing the bonds by deposit of the stock. They were to be guaranteed, principal and interest, by the C., H. & D. or were to be replaced by joint and several bonds of the two companies, which, in addition, were to guarantee, while any of said original or substituted bonds were outstanding, the payment of interest on all Chicago, Cincinnati & Louisville outstanding bonds, $6,600,000.

This subscription was not delivered until the subscriber was given an indemnifying agreement by F. H. Prince & Company and New-

man Erb, dated June 10, 1904, whereby they agreed jointly and severally to assume the subscription in case the negotiations then pending for the acquisition of the Chicago, Cincinnati & Louisville stock were not consummated and carried out on terms satisfactory to Wm. A. Bradford, jr., on or before the due date of the first installment on said subscription, not later than June 30.

A contract for the construction of 5,000 freight cars and 50 cabooses was the consideration received by the American Car & Foundry Company for its subscription for $625,000. The syndicate agreement as to this transaction was originally signed by Newman Erb. The contract was executed on behalf of the C., H. & D. by Eugene Zimmerman, then its vice president, but neither the executive committee nor the board of directors had previously authorized him or any other officer to negotiate or execute any such contract. Such evidence as is available would tend to show that the price received by the equipment company for the cars was not excessive. It may be noted that W. K. Bixby, chairman of the board of the American Car & Foundry Company, was a member of the Prince syndicate and a director of the Pere Marquette.

As to the subscription of Rudolph Kleybolte & Company for $250,000, it is of record that this firm was then under contract with the syndicate to buy from it at par 10,000 shares of C., H. & D. preferred stock which had been sold to it at 110, and was also under contract to purchase $2,000,000 of the bonds of the terminal company at 97 and interest, with an option on $500,000 additional at the same price. Later on this firm financed a purchase of equipment by the C., H. & D., involving the issuance of equipment notes for $1,080,000 and payments of $120,711.03 in short term notes.

George H. Norman contributed part of the Pere Marquette stock sold to the C., H. & D. and procured the contribution of others in that sale to a large amount.

The subscription for $125,000 in the name of the Union Trust Company (of Detroit) was made by W. C. McMillan and T. H. Newberry in the name of the company, but in their personal interest, in the expectation of profit and through personal friendship with Frederick H. Prince. They later gave the trust company an agreement holding it free from any liability on account thereof. McMillan was a director of the trust company and chairman of its executive committee. The execution of the subscription agreement in the name of the company was without prior authority, but the executive committee later confirmed that action.

The subscription of Wm. L. Bull for $62,500 was made purely as a speculation.

Eben Richards was vice president of the Mexican Central Railroad, in which company F. H. Prince was also interested.

H. C. Pierce was father-in-law of Eben Richards and friendly to the Prince interests.

Eugene Zimmerman's interest in the plans of the promoters is evident throughout; in fact, he was one of them. As already stated, he was in addition a signer of the vendors' agreement for 12,000 shares of C., H. & D. common and 2,400 shares of preferred. He became president of the C., H. & D. in the change of management following the consummation of the plan.

The New York Air Brake Company, at the solicitation of Prince and Erb, subscribed for $125,000, through its president, C. A. Starbuck, for reasons stated by the latter, thus:

I went to see them, hearing they were going to place a large order for new equipment, locomotives and cars, and I wanted to get the brake business for the New York Air Brake Company; they said if I wanted the business I would have to subscribe to the syndicate and take some of the underwriting; they said the car builders and locomotive builders were doing it and the Westinghouse people would do it unless I did, and without it I could not get the business; and on that condition I made the subscription to the syndicate for, I think, a thousand shares.

Swift & Company were represented through the subscription of Edward Tilden for $187,000, and Dumont Clarke, one of their directors, was a syndicate manager. G. M. Cumming, who saw Tilden regarding this subscription, testified in the *Bradford Case*, *supra*, with reference to the reason therefor:

A. They thought in the first place, as I understood it, it was going to be of interest to them to have a company in which they had a financial interest, and they also desired, I think, to protect themselves against what they considered an unreasonable advance in rates by having an interest in the company.

Q. And they made this subscription, as you understood it, in order to in some way or another protect their business as packers?

A. That was my understanding.

Q. And the advantages that would come from their being interested in this railroad company?

A. So I understood.

The subscription of E. N. Foss for $62,500 was made as a speculative investment.

Nothing specific is of record as to the purpose underlying the subscription of Samuel R. Shipley for $87,500. He was at that time president of the Provident Life & Trust Company, of Philadelphia, which subscribed for $312,500, and was also a director of the Pere Marquette. The interest of his company in subscribing has already been stated.

Harvey Fisk & Sons, in subscribing for $312,500, acted as agents for the American Locomotive Company, the consideration being

orders by the Pere Marquette and C., H. & D. for 40 locomotives. These orders were dated June 22, 1904, and in the case of the C., H. & D. the order was executed by Eugene Zimmerman as vice president without authority from the board of directors or executive committee. The record does not show that the prices paid for these locomotives were unfair.

This brief recital of the motives or considerations inducing the various subscriptions to the syndicate makes it plain that, as stated before, the bulk of the subscriptions were bought with pledges which were to be fulfilled largely by the two carriers, the C., H. & D. and the Pere Marquette. So far as the C., H. & D. was concerned, the first steps in discharging its share of the promoters' pledges were taken at the meeting of its board on July 7, 1904. The acts of the board of directors at this meeting were purely perfunctory. All the papers and agreements acted upon had been prepared previously; they were presented under the supervision of Thomas H. Tracy, already mentioned as of the Toledo group; and they were acted upon by the directors practically without discussion.

2. *Reorganization of C., H. & D. board and management in syndicate interest.*—On July 6, 1904, the board was composed of the following 13 members: Henry F. Shoemaker, Eugene Zimmerman, Alfred Kessler, George P. Benjamin, George R. Balch, W. A. Shoemaker, C. A. Mayer, Heman Dowd, Joseph B. Foraker, M. D. Woodford, Lawrence Maxwell, jr., F. H. Short, and Rush Taggart.

Pursuant to adjournment from the preceding day, this board met at 12.45 p. m. of July 7, 1904, in the office of the company in New York City, the first eight directors named above being present. The first business of the meeting was the acceptance of the eight resignations required by the terms of the vendors' agreement, those resigning being directors Short, Taggart, Dowd, Benjamin, W. A. Shoemaker, Kessler, Balch, and Mayer. The following were elected to fill the eight vacancies: Thomas H. Tracy, George M. Cumming, James J. Robison, Bradley W. Palmer, Rudolph Kleybolte, Alex. B. Pierce, James Phillips, jr., and Eben Richards, and being present they took oath of office and their places as members of the board.

The new board then elected Eugene Zimmerman as president of the company, vice M. D. Woodford, resigned; George M. Cumming as vice president, vice Zimmerman, resigned; R. B. Wilson as secretary, vice Short, resigned; and accepted the resignation of Henry F. Shoemaker as chairman of the board. Of the old members who remained on the reorganized board, Henry F. Shoemaker, Zimmerman, and Woodford were vendors of C., H. & D. stock to the new control. Of the new members Tracy and Robison represented the Toledo-St. Louis interests; Cumming represented the United

States Mortgage & Trust Company; Palmer and Phillips represented F. H. Prince and F. H. Prince & Company; Richards's affiliation with the Prince interests has already been mentioned; and Kleybolte was a member of the syndicate with other interests, as before described, he having insisted on being included in the directorate. Pierce was replaced on July 20 by Russell Harding, the new operating manager of the two properties, who was also a director of the Commonwealth Trust Company and a member of the St. Louis syndicate.

3. *C., H. & D. syndicate pledges fulfilled.*—The reorganized board, immediately after the election of corporate officers, authorized the execution of a 99-year trackage contract, dated June 25, 1904, between the terminal company and the Pere Marquette and C., H. & D., jointly, granting the use of the terminal company's tracks and terminal station and facilities. The grantees agreed each to pay its proportion of taxes, maintenance and operating costs, and in addition each agreed to pay one-half of $82,125 per annum, the latter amount being about equivalent to one-half the yearly interest on the terminal company's issue of $3,500,000 4½ per cent bonds, and on $150,000 of 5 per cent bonds issued by its subsidiary, the Toledo Riverside Railway Company. One consideration of this agreement was that the grantees should jointly and severally purchase and guarantee these bonds in accordance with a certain contract to be simultaneously delivered. Directors Shoemaker and Tracy were excused from voting on this contract, the latter at his own request because of his interest in the property. The C., H. & D. stockholders approved this contract on the 19th of October, 1904.

Thus was fulfilled one of the considerations promised by the promoters to the Toledo-St. Louis parties for their large subscriptions to the C., H. & D. syndicate. Another of those considerations was the joint guaranty of principal and interest of the bonds in question by the C., H. & D. and Pere Marquette. This was the next matter acted on by the reorganized board. It authorized the execution of the contract dated July 1, 1904, required by the before-described trackage contract to be delivered simultaneously therewith. Under the terms of that contract the C., H. & D. and Pere Marquette jointly agreed to purchase said bonds at 97 and interest, and to accept delivery as follows: Thirty per cent on July 5, 1904; 35 per cent on or before September 5, 1904; 35 per cent on or before October 5, 1904. The purchasers were granted the right to require that the terminal company's bonds be replaced by new bonds to be issued under a new mortgage satisfactory to them. It was agreed that the purchasers should negotiate and sell the bonds so purchased, and, in order to enhance the price thereof and to obtain full value therefor, should

jointly and severally guarantee the payment of the principal and interest thereof; that, if the purchasers should ever be required to make any payments on account of their guaranty of the interest, such sums should constitute a claim against the terminal company, in liquidation of which the purchasers agreed to accept the 5 per cent cumulative preferred stock of that road; that the net earnings from the terminal properties should be applied toward the payment of bond interest before any dividends on stock should be declared; and also, that the fixed rental provided in the trackage contract should be used only to pay interest and operating expenses.

The C., H. & D. board, in addition to authorizing the execution of the July 1 contract just described, formally authorized the indorsement of the required guaranty on the bonds and empowered the president and secretary to execute a contract for the sale of said bonds. Shoemaker and Tracy were also excused from voting on these matters. The C., H. & D. stockholders approved both contracts on October 19, 1904.

The sale of the terminal company's bonds was effected under a contract dated July 7, 1904, between the Pere Marquette and C., H. & D., as "sellers," and Rudolph Kleybolte & Company, as "purchasers," whereby $2,500,000 in par were to be taken at 97 and interest and $800,000 in par at 97½ and interest, provided the before-described joint guaranty of the sellers was first indorsed on the bonds. It will be noted that according to the contracts a profit of one-half point would have been realized by the sellers on the $800,000 block sold at 97½. Their accounting records, however, do not carry any entries covering either the purchase or sale of any of these bonds, and it seems quite evident that the provisions for the purchase and sale of the bonds by the Pere Marquette and C., H. & D. were merely precautionary, being thought to legalize the guaranty.

Next the reorganized board authorized the issue of $25,000,000 of C., H. & D. 4 per cent refunding mortgage bonds dated July 1, 1904, due 1954. The stockholders had authorized an issue of such bonds in December, 1900, a fact known and depended upon by the promoters in their plans.

The fourth piece of business was one of vast importance to the C., H. & D., namely, the purchase of 110,000 shares of the common stock of the Pere Marquette. In this connection reference is made to the facts heretofore set forth, bearing on the value of these shares. It was the intention to supplement this large block of stock by other shares to be acquired from the Pere Marquette treasury through a collateral transaction and thus provide a means of assured voting control. This sale was the cornerstone in the whole structure built by the original promoters, whose aim was the sale

of their Pere Marquette stock. It was presented to the board by Thomas H. Tracy in the form of a letter dated July 5, 1904, from F. H. Prince & Company, addressed to the C., H. & D. The opening sentence reads:

At the request of officers of your company we have secured the right and option to offer to you 110,000 shares of the Pere Marquette Railroad Company of the par value of $100 each represented by certificates of the said railroad corporation or by voting trust certificates, including shares belonging to ourselves, for the price of $125 each, upon the terms and conditions hereinafter named.

Prior to this meeting the subject had never been presented either to the board or the executive committee, and no officer of the C., H. & D. had been authorized to negotiate for such an option. The letter named the terms and conditions of the proposed sale and contained the proviso—

that a material consideration for and condition of the sale of the said stock shall be the due execution and delivery of a trackage agreement between your company and the Pere Marquette Railroad Company and others in form substantially as presented herewith.

This latter contract will be treated of later. The letter concludes with the statement that if the offer is accepted, Prince & Company agree to accept such "reasonable and proper commission" as should thereafter be agreed upon, provided a cash payment of $250,000 be made to them at once as a portion of said commission.

In connection with this purchase of Pere Marquette stock there was next presented a report, dated May 16, 1904, made to the United States Mortgage & Trust Company by one J. T. Odell, referred to in this record as formerly a railroad official, on the proposed union of the two properties and the value of the Pere Marquette stock. This report concludes with the following collection of generalities, evidently calculated, not to influence wavering directors, that being unnecessary, but to bolster up the record:

Many persons, in criticizing the value of any railroad stock, overlook the main proposition of capitalization per mile of road and jump at a conclusion without reasoning. The capitalization of the roads in question by comparison are extremely low. I can find nothing to compare with them. A glance at the map reveals a producing and consuming territory of vast proportions. This great country is entitled naturally to an increase in its business domestically of 8 per cent per year and in its export business a great deal more. I presume this combination can be said to be the last of the trunk lines and among the best. No person could place a prospective value on the common stock of the Pere Marquette. Its value under the plan presented to me is in my judgment greater than $150 per share, and its acquisition at that price by the Cincinnati, Hamilton & Dayton would be a conservative and highly profitable investment. An examination by the most skeptical will verify this. The operation of the two roads as a unit is worth a large sum, far more than any value that attaches to them separately, but I have endeavored to treat only of known quantities.

The board accepted the offer of F. H. Prince & Company, and authorized the execution of a contract with that firm dated July 6, 1904, whereby the C., H. & D. agreed to purchase the 110,000 shares at the price of $125 per share, payable at the option of the C., H. & D. in cash, or, $75 per share in the 4 per cent refunding mortgage bonds just previously authorized, plus $50 per share in new C., H. & D. common stock or in two-year, noninterest-bearing notes issued under an indenture with the United States Mortgage & Trust Company dated July 6, 1904. The C., H. & D. agreed to accept only such Pere Marquette stock as was delivered or designated by the sellers, also to pay the latter forthwith $250,000 in cash as a portion of their commission, the balance thereof to be fixed by agreement between the sellers and a committee appointed by the C., H. & D., concerning which further facts are presented in this report at page 130. The execution of the trackage contract with the Pere Marquette was included as a moving consideration to the stock purchase contract.

Among the resolutions passed on this subject was one whereby 50 per cent of the Pere Marquette stock acquired should be deposited under the before-described 4 per cent refunding mortgage bonds and 50 per cent under the collateral trust indenture securing the two-year notes to be issued as part of the purchase price. Upon the liberation of the latter stock it was to be deposited as additional security under the refunding mortgage. All of the acts of the board in this purchase were approved by the C., H. & D. stockholders at a meeting on October 19, 1904.

The next business before the board was to provide for the issuance of $5,500,000 of two-year notes wherewith to pay $50 per share on account of the price of the Pere Marquette common stock. These purchase money gold notes were issued under an indenture dated July 6, 1904, with the United States Mortgage & Trust Company and were supported wholly by an equal amount in par of the purchased Pere Marquette common stock. They bore no interest and the C., H. & D. had the right of redemption, with certain dividend adjustments, at or before maturity by exchanging therefor (*a*) note or notes of substantially the same terms convertible into C., H. & D. common stock, par for par, or (*b*) C., H. & D. common stock, par for par.

In fulfillment of the requirement in the contract of purchase, the new board, as its sixth piece of business, voted its authority for the execution of an agreement, dated July 1, 1904, with the Pere Marquette and George H. Norman on behalf of himself and other Pere Marquette stockholders. By its terms the two carriers bound themselves for 50 years to the preferential interchange of freight and passenger business; the C., H. & D. was given the right to

build and maintain a physical connection or connections with the Pere Marquette; the C., H. & D. was granted the right for 50 years to the common use of practically all of the Pere Marquette lines at a cost equal to its locomotive-car-mileage proportion of maintenance and taxes on such portions so used; the C., H. & D. agreed that after providing for the accrual of dividends on all classes of its own preferred stock it would advance to the Pere Marquette during the 50 years of the contract sums sufficient to make up any inadequacy of the latter's earnings and receipts from all sources to meet operating expenses, taxes, interest, and all other fixed charges, annual dividends of 4 per cent on all preferred stock, and 4 per cent on common stock from July 1, 1904, to January 1, 1905, and 5 per cent thereafter. In case the earnings of the Pere Marquette for any year or years in the 50-year period should be more than sufficient to pay the items enumerated, including dividends, such excess should be payable to the C., H. & D. in repayment of any advances made, but otherwise the latter would have no claim against the former for such advances. The agreement also gave the C., H. & D. the right within the 50-year period to lease the Pere Marquette outright for not exceeding 99 years on the basis, substantially, of a form of lease attached to the agreement. The Pere Marquette was pledged to take proper corporate action regarding any such lease and also regarding any consolidation of stock, railways, property, and franchises desired by the C., H. & D.

The C., H. & D. stockholders at their meeting on October 19, 1904, approved this trackage and preferential interchange agreement upon condition that the lease therein referred to be made to correspond to the agreement itself by providing that the payments of dividends on Pere Marquette stocks should be subject to the prior application of C., H. & D. earnings to the payment of dividends on all classes of C., H. & D. preferred shares. Any surplus of C., H. & D. earnings could be applied as dividends on Pere Marquette stock together with the surplus from the latter road. On November 2, 1904, the stockholders voted to reconsider their previous action on this matter, but on January 12, 1905, they approved the agreement as authorized by the board. This contract was superseded by the lease described at page 141.

The next two, and final, transactions of importance by the reorganized C., H. & D. board on July 7, 1904, covered the obligations to be undertaken by that company in fulfillment of the promoters' pledges with respect to the subscription of George A. Fernald & Company. As before stated, this subscription was for and on behalf of Wm. A. Bradford, jr., and other stockholders of the Chicago, Cincinnati & Louisville Railroad.

The burdens to be placed upon the C., H. & D. by these pledges of the promoters were expressed in two contracts, the execution of which was authorized by its board at the meeting under discussion. The first of these instruments was a lease and trackage contract in form as submitted to the meeting and made a part of the minutes thereof. Although it was never executed and delivered its authorization by the new board is significant. By this contract the C., H. & D. was granted an outright lease for 99 years of the property of the Chicago, Cincinnati & Louisville in the state of Ohio and rights for the common use of that road during the same period from the Ohio-Indiana state line to Peru, Ind. The C., H. & D. became bound to guarantee the interest on all then outstanding Chicago, Cincinnati & Louisville bonds while any part of the $4,000,000 of Pere Marquette bonds, or bonds substituted therefor, remained unpaid, and also became bound to execute joint C., H. & D.-Pere Marquette bonds for a like amount to replace the original Pere Marquette bonds. The rights of the C., H. & D. to the leased section and also to the joint sections were to terminate not only upon default by it of its undertakings under this contract but also upon any breach of the terms and conditions of the collateral trust indenture. The C., H. & D. agreed to do all that might be necessary to complete the leased section or place it in proper condition and to pay all taxes thereon, and to keep and maintain it in good repair. The Chicago, Cincinnati & Louisville was to provide operating facilities for and to maintain the joint section and to conduct the movement and operation of trains over it. The C., H. & D. was to pay a sum unstated and a locomotive-car-mileage proportion of the taxes on and maintenance of the joint section.

The primary purpose of this lease of a section of the Chicago, Cincinnati & Louisville to the C., H. & D. was to bolster up the legality of the latter's guaranty of the Pere Marquette bonds involved. Then, to safeguard the legality of the lease under Ohio statutes, it was deemed necessary to establish a physical connection between the C., H. & D. and the Chicago, Cincinnati & Louisville, although such a connection already existed at Cottage Grove, Ind., between the Chicago, Cincinnati & Louisville and the Cincinnati, Indianapolis & Western, a proprietary line of the C., H. & D. The new connection with the C., H. & D. was later constructed at Cincinnati.

The second contract which bound the C., H. & D. to the purchase of the Chicago, Cincinnati & Louisville and collateral transactions was one between the C., H. & D. and Pere Marquette, dated July 7, 1904. In connection with the recording of this transaction on the minute books of the C., H. & D., it is important to state that the

agreement attached to that record and therein said to have been acted on by the board on July 7, 1904, is not the one actually before that body on that day and then passed upon by it. The original agreement provided for the acquisition by the C., H. & D. of the *entire* interest of the Pere Marquette in the Chicago, Cincinnati & Louisville, whereas the agreement now attached to the record provides for the acquisition of only a half interest. The latter instrument was not drawn until September, 1904. The record in this proceeding does not determine who directed this falsification of the C., H. & D. minutes. It would appear from the following resolution adopted by the board on October 19, 1904, that those in control were familiar with this condition and considered it necessary to safeguard the contracts by further action:

Resolved, That that portion of the minutes of the meeting of July 7, 1904, which refers to the contract between the Pere Marquette and the Cincinnati, Hamilton & Dayton railway companies with reference to the Chicago, Cincinnati & Louisville Railroad Company's stock, also which refer to the contract and lease with the Chicago, Cincinnati & Louisville Railroad Company, be, and hereby are, approved.

The agreement now a part of the C., H. & D. minutes provides for the sale by the Pere Marquette to the C., H. & D. of an undivided *one-half* interest in (*a*) the former's rights in the entire capital stock of the Chicago, Cincinnati & Louisville; (*b*) the agreement of July 1, 1904, between the Pere Marquette and John F. Wilcox under which said rights were acquired; and (*c*) the collateral trust indenture dated July 1, 1904, with the American Loan & Trust Company, trustee, under which the Pere Marquette bonds were to be issued in payment for the stock. In consideration of this transfer the C., H. & D. agreed (1) to pay one-half of principal and interest of the entire issue of Pere Marquette bonds under the said indenture and one-half of any joint and several bonds issued in substitution therefor; (2) to assume one-half of the liability of the Pere Marquette under the purchase agreement with John F. Wilcox, under the bonds, original or substituted, and under the collateral trust indenture; (3) to perform and comply with all the covenants of the two agreements; and (4) to execute any further instruments necessary to carry its obligations thereunder into effect. Attached to and made a part of this agreement were the before-mentioned Wilcox purchase agreement and the collateral trust indenture of the Pere Marquette which had been authorized by its board of directors on June 28 and approved by its stockholders on June 29, 1904.

Briefly stated, these last-named instruments provided for the purchase by the Pere Marquette of $4,206,000 par value, the entire issue, of Chicago, Cincinnati & Louisville stock for $3,500,000 in Pere Marquette 10-year 4 per cent gold bonds issued under the indenture

which required the deposit of the stock as security for the bonds. The indenture provided for $500,000 additional bonds to be used in improving and further equipping the Chicago, Cincinnati & Louisville. The operation of that road and the right to nominate three directors and certain officers were to pass to the Pere Marquette upon the delivery of the bonds. Complete control, except as to the naming of one director, should be surrendered upon the execution by the C., H. & D. of its guaranty of the bonds, or upon its execution of joint and several C., H. & D.-Pere Marquette bonds in substitution therefor, together with the guaranty provided in the indenture. The Pere Marquette was bound to guarantee the payment of the interest on all Chicago, Cincinnati & Louisville bonds, $6,600,000 par value. It was agreed that, whether fully performed or not, certain construction contracts with John F. Wilcox should be declared fulfilled and satisfied. The latter agreed to pay cash into the Chicago, Cincinnati & Louisville treasury at stated intervals equivalent to the estimated cost of extending the line from Griffith, Ind., to Calumet Park, Ill., or, if Chicago was reached without building any extension, to turn over general refunding bonds of the Chicago, Cincinnati & Louisville equivalent in par to the estimated cost of the said extension. He was also to receive the current assets and to assume the current liabilities of the Chicago, Cincinnati & Louisville as of June 30, 1904; he was to pay principal and interest on $50,000 equipment bonds falling due on July 1, 1904, and to receive an equal amount of general and refunding bonds of the Chicago, Cincinnati & Louisville; he was to pay all interest accruing to July 1, 1904, on all Chicago, Cincinnati & Louisville bonds and equipment obligations; he was to provide for the interest accruing during the year ending June 30, 1905, on the $3,500,000 of Pere Marquette bonds issued for Chicago, Cincinnati & Louisville stock; and he was to own all subsidies and municipal aids previously promised or obtained in the construction of the Chicago, Cincinnati & Louisville.

The last two transactions described, namely, the execution of the lease and contract with the Chicago, Cincinnati & Louisville and of the agreement to purchase one-half of the Pere Marquette's interest in the Chicago, Cincinnati & Louisville, were approved by the C., H. & D. stockholders on October 19, 1904, and again on January 12, 1905. On January 18, 1905, the board again authorized the execution of the lease and trackage contract and also authorized specifically the indorsement of the C., H. & D.'s guaranty on $4,000,000 of the Pere Marquette bonds previously described.

The pledges of the promoters were not all fulfilled on July 7, 1904, by the C., H. & D. board. The pledges to purchase new equipment, by which the subscriptions in the interest of the American Car &

Foundry Company and of the American Locomotive Company had been bought, had previously been fulfilled in part by contracts with those companies dated June 1 and June 22, respectively, executed by Eugene Zimmerman as vice president of the C., H. & D. This he did without the authority of either the board or the executive committee, those bodies never having authorized him or anyone else to execute such contracts; in fact, the matter had not been heard of by them. These contracts are not in the official files of the C., H. & D., but the records show that they were presented to the new executive committee on July 9, 1904, and by it unanimously ratified and confirmed, Zimmerman, Cumming, and Tracy being the members present. It may well be that the executive committee also acted in this matter without authority, for later, on August 11, 1904, the board voted specifically to refer to the executive committee the matter of acquiring additional equipment. The actual acquisition of the equipment from the two subscriber builders was accomplished still later under the terms of various equipment trusts; one for $2,408,339, dated October 1, 1904, entered into by the C., H. & D. with Robert Winthrop & Company, provided for the purchase of equipment, including 20 locomotives from the American Locomotive Company and 2,750 freight cars from the American Car & Foundry Company; and one for $1,977,266, dated October 1, 1904, entered into by the Pere Marquette with Robert Winthrop & Company, provided for the purchase of equipment, including 2,250 freight cars from the American Car & Foundry Company and 20 locomotives from the American Locomotive Company. Also, by an equipment trust amounting to $1,200,711.03 with Rudolph Kleybolte & Company, under date of April 1, 1905, the C., H. & D. purchased some $490,000 worth of other equipment from the American Car & Foundry Company. It is to be noted in this connection that the two banking firms involved in these equipment trusts were, as before stated, represented in the C., H. & D. common-stock syndicate.

There was delay, also, in the fulfillment of the promoters' pledge given to secure the $625,000 subscription of the United States Express Company through Vermilye & Company. At the time this subscription was made, in May, 1904, the United States Express Company was conducting the express business over the lines of the C., H. & D. and its subsidiary companies, in all some 990 miles. The express privileges on this mileage *only* had been granted it by a contract of September 30, 1902, whereby the C., H. & D. received as consideration 40 per cent of the gross express revenues from business over its lines, with a guaranteed annual return of $144,000. This contract became effective November 1, 1902, and was to con-

tinue 15 years, and thereafter until discontinued or modified as provided. June 27, 1904, a new contract was entered into, effective that day, the C., H. & D.'s participation being through Eugene Zimmerman, then its vice president, and T. C. Platt, representing the express company. Its effectiveness was provided until June 27, 1919, and thereafter until discontinued or modified as provided, in other words, a 15-year term like the prior contract. This first of all granted express privileges over the same mileage as did the previous contract, but added:

all other lines of railroad, and all other transportation lines, which the railroad companies, or their successors or assigns, may at any time hereafter, during the life of this contract, construct, own, possess, lease, operate, or acquire or control by any such contract or agreement as will enable the railroad companies to empower or permit the express company to carry on business on and over the same.

The consideration to the C., H. & D. was the same as before, 40 per cent of gross express revenue, with a minimum of $144,000 per annum. For any increase above the original 990 miles the railroad return was to be 42 per cent of the gross express revenues, minimum $80 per mile per annum. The execution of this contract on behalf of the C., H. & D. by Eugene Zimmerman was entirely without the authority of that company, neither the board nor the executive committee having previously given him or any other officer or agent such authority.

At this time the express privileges on the Pere Marquette were held by the American Express Company; those on the Chicago, Cincinnati & Louisville by the Pacific Express Company. When, therefore, the United States Express Company subscribed to the syndicate agreement, and on July 5, 1904, paid the call of 30 per cent on its subscription, it knew full well the extent of its expectations under the contract of June 27, 1904. Its primary reward would be the eventual acquisition of the express privileges on the Pere Marquette and the Chicago, Cincinnati & Louisville. Not only did it stand to gain new mileage; it protected its business on the C., H. & D., as the officials of the latter, who were also members of the syndicate, made it clear at the beginning that it was desired to have but one express company operating over all their roads. These together constituted the inducing motive back of the subscription of $625,000.

When the syndicate agreement was signed it was understood that the American Express contract on the Pere Marquette expired July 31, 1905. This, however, proved to be an error, and it was not until November 1 of that year that the business was surrendered to the United States Express Company. In the meantime, the Erie Rail-

road Company had gained control of the C., H. & D.-Pere Marquette combination. That fact gives considerable significance to a supplementing of the contract of June 27, 1904, by an agreement dated October 28, 1905, whereby the railroad's compensation was increased from 40 to 45 per cent, in the case of the C., H. & D. system proper, and from 42 to 45 per cent in the case of the other railroads acquired, including, of course, mainly the Pere Marquette. From the record it would appear that this concession was gained through the announced threat of the Erie management to install Wells Fargo service on the Pere Marquette and to require the diversion of as much C., H. & D. tonnage to Erie rails as possible. These contracts were in effect on the C., H. & D. until July 1, 1914, when the Wells Fargo succeeded to the business.

Henry F. Shoemaker, prominent under the preceding management, and also a director on the new board, was present at this meeting of July 7, 1904, and except where he refrained entirely from voting on the propositions presented, invariably voted "no."

The new board, in addition to carrying out the syndicate pledges, were mindful in other ways of syndicate interests. Thus change was made in the New York depository of the C., H. & D. Prior to July 7, 1904, the North American Trust Company had held that position. The directors in their meeting of that day, Henry F. Shoemaker again voting "no," designated the United States Mortgage & Trust Company as such depository thereafter, and directed the transfer of the company's funds accordingly. At this time the United States Mortgage & Trust Company, as previously stated, was acting as depositary of the C., H. & D. syndicate funds, and had negotiated loans to that syndicate aggregating $2,775,000 at 5 per cent with a 3 per cent commission. Shoemaker was a director in the North American Trust Company.

The personal interests of syndicate members were again recognized at the directors' meeting in New York on July 8, 1904, when King & Tracy, a law firm of Toledo, Ohio, were "appointed counsel to this company, to do and perform such service as may be required of them by the board or its officers." Thomas H. Tracy was then a director of the C., H. & D., elected on the preceding day, and with his partner, Harry E. King, had a financial interest in the terminal company and the construction company, Tracy being the leading spirit in both companies, as stated elsewhere. On account of the latter connection both were deeply interested in the syndicate, in which Tracy had been very active. Subsequently, on October 19, 1904, President Zimmerman announced to the board that he had appointed Tracy to be general counsel of the company.

IV. ZIMMERMAN-HOLLINS CONTROL, 1904–1905.

1. *Acquisition of control through retirement of 5 per cent preferred stock.*—The syndicate had scarcely secured control and carried through its more important plans when it met with the vigorous opposition of certain 5 per cent preferred stockholders, who protested against the Pere Marquette, the Chicago, Cincinnati & Louisville, and collateral transactions. These stockholders were represented by a committee consisting of Edward L. Heinsheimer, Joseph S. Graydon, George B. Cox, and Lawrence Maxwell, jr. The latter, who acted as counsel for the committee, was then general counsel and a director of the C., H. & D., and was himself the owner of 1,200 preferred shares. Claim was made that those transactions were *ultra vires* and fraudulent, and the complainants threatened litigation to have the purchases rescinded unless the preferred stockholders were bought out at $110 per share. Whether or not this well-timed opposition was a part of the plans of any or all of the promoters is not disclosed by the record before us. Certain it is that such opposition was to be anticipated when the preferred stockholders, who were not among the "insiders," learned of the burdens placed on their road by the common-stock syndicate.

The management of the syndicate yielded to the demands of the protesting stockholders and agreed to buy their stock at $110, it being also agreed that all other holders of the 5 per cent preferred should be admitted to the settlement on the same terms. An effort was made to raise the necessary funds within the syndicate, but without success. Finally Joseph Auerbach, of the law firm of Davies, Stone & Auerbach, attorneys for the United States Mortgage & Trust Company, suggested that he might be able to make the necessary arrangements with the banking firm of H. B. Hollins & Company, of New York, composed of Harry B. Hollins, Bernard J. Burke, and Rafael R. Govin. Such arrangements were made in August, 1904, but under their terms the Hollins firm gained control of the common-stock syndicate, and consequently of the two carriers. Such a surrender of control by the common-stock interests shows the strength of the claims of the preferred stockholders, but it should again be stated that the syndicate subscribers had been called upon for only 30 per cent of their subscriptions up to that time, and by the arrangements with the bankers those whose interests passed to the latter were to be repaid such subscription payments with interest. Then, too, the benefits pledged to the subscribers in order to induce them to subscribe were evidently allowed to accrue to them, for the arrangements with Hollins & Company specifically secured

to those subscribers the approval of those benefits at the coming stockholders' meeting, and there is no evidence that any further effort was made to interfere with the consummation of those transactions. Lawrence Maxwell, jr., later voted as a director in favor of the retirement of the preferred stock, continued as general counsel until October 1, 1904, and had charge of general litigation matters of the C., H. & D. up to December 31, 1904, receiving regular compensation for his services. He was a director until October 10, 1905.

The burden of buying in the 5 per cent preferred stock was placed on the C., H. & D. in the form of a purchase for redemption. The formal action taken by the company and its arrangements with the Hollins firm for financing the retirement were as follows:

At a meeting of the C., H. & D. board on August 11, 1904, under a preamble reciting the protest of the 5 per cent preferred stockholders, this resolution was adopted:

> In the interest of the corporation and of all classes of its stockholders it is desirable that the 5 per cent preferred stock of this company be extinguished.

The directors then voted it to be the sense of the board that such stock should be extinguished and redeemed and to that end authorized the president to appoint a committee with power to close, on behalf of the corporation, the arrangements necessary to carry the preceding resolution into effect. The committee consisted of Cumming, Palmer, and Tracy, with president Zimmerman ex officio.

Note should here be taken of the fact before stated that a portion of this preferred stock represented part of the water poured into the capitalization in the 1895 consolidation by which the C., H. & D. was formed.

To effect this retirement the company on August 16, 1904, entered into an agreement with H. B. Hollins & Company and a trust agreement with the Central Trust Company of New York and others. These agreements were approved by the board on August 17 and by the stockholders on October 19, 1904. At the meeting on August 17 the board also authorized the payment of $100,000 in cash to H. B. Hollins & Company on the execution of the contract with them. This had been paid on August 16, 1904.

The Hollins agreement contained as a part thereof an agreement of the same date between that firm and P. J. Goodhart & Company, brokers, of Cincinnati, acting for themselves and other holders of C., H. & D. 5 per cent preferred stock, whereby the sale to Hollins & Company of 12,000 shares of such stock was agreed upon at $110 per share, cash, payable on demand on August 30, or on any day thereafter up to September 30, 1904. The purchaser also agreed to accept between those dates and on the same terms any other shares of that stock offered by the Goodhart firm, and further agreed not to

purchase any preferred stock prior to October 1, except from that firm. By the contract with the C., H. & D., Hollins & Company agreed to purchase all the 5 per cent preferred stock offered under the terms of the Goodhart agreement, and were permitted, for one year after September 30, 1904, to buy any other shares of said stock, all of the stock purchased to be held and disposed of according to the terms of the agreement with the C., H. & D. The Hollins firm agreed to buy, between September 30 and December 1, 1904, any of said stock which the C., H. & D. might request them to buy, provided it could be acquired at a price not more than par. As each 100 shares of the stock were purchased, certificates therefor were to be delivered to the Central Trust Company of New York for account of the C., H. & D., and such stock was forthwith to be transferred to such parties as Hollins & Company should designate, indorsed in blank by such parties, and redelivered to Hollins & Company or their nominees, having first been indorsed to the effect that it was subject to redemption by the C., H. & D. on or before August 30, 1905, in accordance with the aforementioned trust agreement. The C., H. & D. agreed that simultaneously with this delivery of the indorsed stock to Hollins & Company it would also deliver its "obligations" to be issued under the trust agreement, which "obligations" would provide for the payment by the C., H. & D. of certain amounts as follows: For every 100 shares of the preferred stock purchased under the Goodhart agreement the C., H. & D. would pay on or before August 30, 1905, $11,000 with interest at 5 per cent per annum from the date of such purchase, plus $1,200 without interest, or, in other words, a price of $122 per share, with interest as stated. For every 100 shares purchased after the expiration of the Goodhart agreement, the C., H. & D. would pay the actual amount paid therefor by Hollins & Company, but not exceeding $11,000, with interest at 5 per cent per annum from the date of purchase, plus $1,200 without interest.

The trust agreement of August 16, 1904, with the Central Trust Company, as amended by a supplemental agreement, dated August 26, 1904, embodied as a part thereof the contract between the C., H. & D. and Hollins & Company, and provided for the issuance of the "obligations" on the basis described, and for securing the same by the pledge of 1,290 of the first and refunding mortgage bonds of the Cincinnati, Indianapolis & Western Railway Company, a C., H. & D. subsidiary, and 7,500 shares of the stock of the Southwestern Construction Company, in addition to the preferred stock itself. The preferred stock certificates were to be attached to the obligations and stamped as redeemable by the company on or before August 30, 1905. In case of default these certificates were to be sold and the proceeds applied to the satisfaction of any balance of debt which

could not be met from the proceeds of the sale of the collateral pledged under the agreement, the C., H. & D. to be liable for any further deficiency.

President Zimmerman delivered to the Central Trust Company of New York the C., H. & D.'s note for $8,449,110, dated August 19, 1904, under terms stated in his letter of transmittal. Therein the note was referred to as representing the aggregate obligation of the C., H. & D. to the trust company and to H. B. Hollins & Company under the agreements, and it was to be canceled upon the delivery of the "obligations" to be issued under the terms of the said agreements. At the meeting on August 27, 1904, the president reported the delivery of this note, and also the delivery to H. B. Hollins & Company of $912,000 in par of the bonds of the Cincinnati, Indianapolis & Western and 7,500 shares of the stock of the Southwestern Construction Company, and his acts were approved. The liability for this note of $8,449,110 was not entered on the books of the company, however, until January, 1905, when the accounts for November, 1904, were closed. This note was not canceled when the "obligations" were issued, but was held by the Central Trust Company of New York with sundry other collateral until finally canceled under the terms of an agreement of June 10, 1910, following a readjustment of the C., H. & D.'s finances.

As a part of the arrangements whereby Hollins & Company undertook to finance the retirement of this 5 per cent preferred stock they contemporaneously, in August, 1904, acquired options on interests in the C., H. & D. common-stock syndicate whereby they were enabled to assume at once the complete control of the C., H. & D. and of the Pere Marquette. This change of control was as radical and complete as that which occurred on July 7, and should be held in mind in considering subsequent events. The surrender of control by the syndicate and the assumption thereof by the Hollins firm were not consummated without safeguarding the previous acts of the old management and assuring for the new all necessary corporate action on the proposed retirement of stock. This was evidenced by the two following documents:

To Eugene Zimmerman, the Toledo Railway and Terminal Company, and other holders of the common stock of The Cincinnati, Hamilton and Dayton Railway Company.

GENTLEMEN: The undersigned, in consideration of the call upon the common stock of The Cincinnati, Hamilton and Dayton Railway Company this day given to us by yourselves, hereby agree that any and all preferred stock of The Cincinnati, Hamilton and Dayton Railway Company purchased by or through us, as well as any and all common stock of said company purchased by or through us, may be voted in favor of approving any and all action heretofore

taken by the board of directors of said company at the meeting held on July 7, 1904, or any subsequent meeting to date; also to vote said stock in favor of all corporate action necessary to redeem and retire or reduce the preferred capital stock of said railway company for said purpose, or for increasing the capital stock of said company for such purpose.

Dated, New York, August 16, 1904.

Yours, respectfully,

(Signed) H. B. HOLLINS & Co.

We, the undersigned, representing owners of common stock of The Cincinnati, Hamilton & Dayton Railway Company to the amount set opposite our respective signatures, hereby approve of the annexed agreements between The Cincinnati, Hamilton and Dayton Railway Company and Messrs. H. B. Hollins & Company, and the trust agreement between The Cincinnati, Hamilton and Dayton Railway Company and The Central Trust Company of New York, and we agree each with the other that we will vote all of said stock owned or controlled by us in favor of the redemption of the 5 per cent preferred stock of said company, or in favor of the reduction of the capital stock of said company for the purpose of retiring said preferred stock and for the purpose of issuing such new preferred stock or such securities as may be necessary in order to provide the funds necessary to retire, pay for, or redeem said 5 per cent preferred stock.

Dated, New York, August 16, 1904.

Name	Address	Number of Shares
The Toledo Railway & Terminal Company,	Toledo	
By Thos. H. Tracy, Vice-President,		6,500
Rudolph Kleybolte & Co.	Cincinnati, O.	2,000
E. Zimmerman,	"	14,000
F. H. Prince,		7,000 Shs.
Mark T. Cox,		5,000 Shs.
Lawrence Slade,		
By G. M. Cumming, his proxy,		33,000 Shares
Charles L. Young,		
By G. M. Cumming, his proxy,		32,000 Shares

The last two signatures represented the 65,000 shares of syndicated stock which included that of the other signers.

Hollins's assumption of control was not immediately followed by a reorganization of the directorate. The first changes occurred on October 10 and 11, 1904, when James N. Wallace, A. Turnbull, A. Skitt, and C. A. Otis, jr., were elected directors, replacing M. D. Woodford, Jas. Phillips, jr., Eben Richards, and B. W. Palmer. James N. Wallace was then fourth vice president of the Central Trust Company of New York, the institution named as trustee under the trust agreement of August 16, 1904, and which thenceforth throughout the Hollins régime was the favored institution in the

handling of C., H. & D.-Pere Marquette finances. The record shows that Turnbull and Otis were the nominees of the United States Mortgage & Trust Company and that their places and that of George M. Cumming, on the C., H. & D., board were to be vacated as soon as the loans negotiated by the trust company for the common-stock syndicate were paid. Meanwhile the resignations of the three were to be held for such purpose by H. B. Hollins & Company. On March 6, 1905, F. L. Eldridge and R. N. Young were elected to succeed H. F. Shoemaker and R. Kleybolte. On June 1, 1905, G. M. Cumming resigned on account of his election as a Hollins representative on the board of a rival road, the Detroit, Toledo & Ironton, and W. L. Dechant took his place on the C., H. & D. board.

The Hollins firm, by action of the board on August 27, 1904, had themselves appointed fiscal agents of the C., H. & D. They subsequently assumed like agency for the Pere Marquette. The C., H. & D. board on December 7, 1904, made them transfer agents of the company in New York, at the same time appointing the Central Trust Company of New York as registrar of the stock.

2. *Five per cent preferred stock syndicate.*—The acquisition of this 5 per cent preferred stock from the public and the raising of funds for that purpose was accomplished through a new syndicate, Hollins & Company being syndicate manager, and the Central Trust Company of New York acting as depositary. It was formed under an agreement of August 16, 1904. The subscriptions to this syndicate aggregated $7,618,050, which amount was based upon the total number of shares of this stock outstanding, 69,255, at $110 per share, the price which Hollins & Company was under contract to pay to P. J. Goodhart & Company. Calls on these subscriptions required full payment by September 29, 1904, and all were paid promptly except those of Eugene Zimmerman, president, director, and member of the executive committee of the C., H. & D., on his subscription for $400,000, and of H. B. Hollins & Company on their subscription for $833,050. Of these two subscriptions, Zimmerman's was not paid in full until November 18, 1904, and nothing was paid on Hollins's account prior to March 10, 1905, when $500,000 is recorded as having been paid in. This latter was so near the time of the general distribution of syndicate profits that the payment was received back with accumulated profits almost as soon as made.

The operations of this syndicate extended up into November, 1905, on the 17th of which month orders were issued by the new Erie management in the C., H. & D. to Hollins & Company and to the Central Trust Company that no more shares should be purchased.

This forestalled the effect of action previously taken by the Hollins management to prolong the period in which to secure the remaining shares outstanding, said action having been through vote of the C., H. & D. board on September 6, 1905, approving a contract which provided for the extension of the original arrangements for one year from August 16, 1905. This vote and the stockholders' confirmation thereof on October 10 were subsequent to the Erie's agreement to purchase control.

A summary of the receipts and disbursements of the syndicate follows:

Total amount paid in on subscriptions	$7,350,000.00
Disbursed as follows:	
39,879½ shares purchased at $110	4,386,717.50
26,890 shares purchased at $108	2,904,120.00
Additional payment of $2 per share on 26,223 shares	52,446.00
Payment of interest on overdrafts	25.02
Payment of express charges	42.75
Payment of exchange charges	1,642.50
Total disbursements	7,344,993.77
Leaving a credit balance of	5,006.23

Strangely enough, this balance at the time of the hearing, May 26, 1916, still remained on deposit with the Central Trust Company to the credit of the syndicate.

The C., H. & D. did not pay at one time for all of the shares thus acquired. It derived the funds therefor from part of the proceeds of a new $15,000,000 3½-year 4½ per cent collateral trust note issue dated March 1, 1905, to be later described. From these funds a general distribution of principal, interest, and profits was made to the syndicate subscribers during the period March 23 to April 14, 1905, the bulk of the payments being made on March 29. All of the subscribers were then paid off in full except Hollins & Company, whose subscription of $833,050 had then been paid only to the extent of $500,000. Each subscriber received an amount equivalent to the amount paid in on his subscription, plus interest thereon at 5 per cent from September 10, 1904, and plus profits of $12 per share for every share represented at 110 by his paid-up subscription. A fact of importance in this connection is that by this settlement the funds of the C., H. & D. were disbursed on the basis of a purchase of 66,227 shares of stock, whereas the syndicate up to that time had acquired only 65,103½ shares and did not acquire the bulk of the shortage until November 15 following. In all, the C., H. & D. acquired 66,769½ shares through the syndicate, paying therefor

$8,347,410.81, which was distributed to the syndicate subscribers as shown by the following statement:

Subscriber.	Amount subscribed.	Payments to subscribers.	
		Date.	Amount.
		1905.	
Hanover National Bank	$250,000	Mar. 29	$284,181.65
Trust Co. of America	[redacted]	Mar. 29	284,181.65
Central Trust Co. of New York	[redacted]	Mar. 29	341,017.96
The		Apr. 10	56,836.33
	100,000	Mar. 29	113,672.66
	250,000	Mar. 29	284,181.65
	100,000	Mar. 29	113,672.66
	100,000	Mar. 30	[1]113,672.66
	25,000	Mar. 29	28,418.16
	50,000	Mar. 29	56,836.33
	1,600,000	Mar. 23	1,756,060.00
		Mar. 27	174,928.15
	300,000	Mar. 29	341,017.96
t Co.	1,000,000	Mar 29	1,136,726.61
	15,000	Mar. 29	17,050.99
	100,000	Mar 29	113,672.66
	200,000	Mar 29	227,345.32
	250,000	Mar 29	227,345.32
		[redacted]	28,418.16
		Apr. 14	28,418.16
telle	25,000	Mar 29	28,418.16
	50,000	Mar. 29	56,836.33
	100,000	Mar. 29	113,672.66
	20,000	Mar. 29	22,734.53
	400,000	Mar. 29	454,690.63
lt Co. of Baltimore	50,000	Mar. 29	56,836.33
	100,000	Mar. 29	113,672.66
	20,000	Mar 29	22,734.53
	100,000	Mar. 27	113,645.30
	20,000	Mar. 29	22,734.53
	10,000	Mar. 29	11,367.26
	200,000	Apr 1	227,345.33
o.	50,000	Mar. 29	113,672.66
	500,000	Mar. 29	284,181.64
	50,000		
	[redacted]	Mar 29	11,367.26
	10,000	Mar. 29	11,367.26
	10,000	Apr. 8	11,367.26
	10,000	Mar. 29	11,367.26
	10,000	Mar. 29	11,367.26
	100,000	Apr. 8	113,672.66
	50,000	Mar. 29	56,836.33
	[2]533,050	Mar 29	568,363.30
		Nov. 16	66,298.94
		Nov. 27	12,504.00
	(3)	Mar 29	56,836.33
Trust Co.	(3)	Mar. 29	56,836.33
Totals	7,618,050		8,347,410.81

[1] Paid to H. B. Hollins & Co.
[2] $565,000 paid in on this subscription.
[3] Account does not show from which original subscribing interests these were transferred nor the amounts thereof. Presumably each interest was $50,000

With reference to the foregoing table it will be noted that several changes occurred in the list of subscribers and in the amounts of subscriptions. The name of the subscriber does not necessarily disclose the real beneficial interest.

Before proceeding with the facts as to the source from which the C., H. & D. derived the funds to accomplish the retirement of this preferred stock there are a number of matters connected with this retirement which should be considered. The first is that at the meeting of the C., H. & D. stockholders on October 19, 1904, at which the

board's action in voting the retirement of the 5 per cent preferred stock was ratified, the preferred stock which had been acquired by the syndicate to the extent of 47,671 shares was itself voted in favor of the ratification and in favor of the corporate acts necessary to carry through the entire transaction.

Along this same line it is of interest and importance to note certain facts with reference to the directors' vote in favor of the retirement. The record shows that 453 shares of the stock stood in the name of Eugene Zimmerman at the time he, as a director, voted in favor of the retirement, and that certificates for 701 additional shares were issued in his name less than two weeks thereafter. Rudolph Kleybolte, another director so voting, had purchased 10,000 shares of said stock from the C., H. & D. common-stock syndicate at $100 per share. Zimmerman, as shown above, was a subscriber for $400,000 in the preferred stock syndicate, and Rudolph Kleybolte & Company for $1,600,000. G. M. Cumming, who also voted for the retirement, represented on the C., H. & D. board the United States Mortgage & Trust Company, which company later received the principal, interest, and profits on a $50,000 subscription in the syndicate. Lawrence Maxwell, jr., a director, also voted in favor of the retirement. At that time 1,200 shares of that stock stood in his name on the company's books. The record before us does not show that he had any interest in the syndicate. He was, however, general counsel of the company up to October 1, 1904, and had charge of legal matters up to December 31, 1904, receiving regular compensation for such services. A printed circular letter dated August 17, 1904, Appendix 14, and addressed to the 5 per cent preferred stockholders by the committee previously described, and for which he acted as counsel, invited the stockholders to take advantage of the terms negotiated by the committee by depositing their stock with P. J. Goodhart & Company, of Cincinnati, Ohio, and receiving therefor $110 per share in cash less $2 per share for the committee's expense and services. In that circular he personally recommended to these stockholders that they avail themselves of the settlement negotiated by the committee, and the circular concluded with the following significant intimation:

> Preferred stockholders who do not deposit their stock before the expiration of the time limited in the foregoing arrangement, must be prepared to meet the claim of the railway company that their stock is redeemable at par.

At the date of this circular the C., H. & D. had already entered into the above-described agreements for retiring its stock, not at par, but at 122 and interest, a fact well known to him, for he had been a party in the negotiations and had voted in favor of said retirement as a director of the company. It must be presumed, moreover, that

his fee as counsel for the preferred stockholders' committee would be one of the expenses of that committee, to be provided for out of the deduction of $2 per share from the price of $110.

It appears that the syndicate acquired 26,890 shares at $108 per share, but $2 per share additional was paid separately on 26,223 of those shares. In explanation of these separate disbursements the Central Trust Company produced written authority from H. B. Hollins & Company to pay $2 per share to P. J. Goodhart & Company on 12,352 shares delivered for their account by Rudolph Kleybolte & Company and to pay the same rate to the Hollins firm on 9,792 shares stated to have been paid by that firm to—

	Shares.
E. Zimmerman on	2,088
M. L. Sternberger on	3,162
Feder, Holzman & Co. on	1,956
Rush Taggart on	816
J. B. Foraker on	1,550
D. G. Edwards on	200
John C. Bruce on	20

Specific authority for the payment at the same rate to H. B. Hollins & Company on the remaining 4,079 shares could not be produced. As previously stated, the Hollins firm was under contract to pay $110 on stock acquired from P. J. Goodhart & Company. Whether or not the deposit of 12,352 shares by another firm for the account of the latter could be construed as a sale is not clear, but other transactions of this period raise some doubt as to the legitimacy of the payments of $2 per share on most if not all of the 26,223 shares. No question exists but that the syndicate paid only a price of $108 for 667 shares.

This was significant, for a provision in article first of the trust agreement between the C., H. & D. and the Central Trust Company was to the effect that the "obligations" issued thereunder should be in the amounts provided in the contract between the C., H. & D. and H. B. Hollins & Company, and in section IV the latter contract provided that the railway company should pay "the amount actually paid by the bankers" for shares purchased by the latter after the expiration of the contract with P. J. Goodhart & Company, September 30, 1904. All of the 667 shares purchased at 108 and 13,857 shares of those on which the additional $2 was paid were acquired by the syndicate after the specified date. When the Central Trust Company issued the "obligations" it made them call for the payment of $110 per share for all the stock acquired. Whether or not it had any other authority is not of record, but this record does contain a letter from H. B. Hollins & Company which requests that

the "obligation" in an amount "to avoid possible confusion." The letter concludes as follows:

> The saving to the company by the purchase of stock at a price less than that price will be adjusted by the balance remaining after the purchase of all the stock, of the money not used in such purchases.

This letter was dated December 1, 1904, previous to which date, however, at least $[illegible] of "obligations" out of the $[illegible] had already been issued. The trust company had knowledge that certain of this stock had been acquired below $120 per share, and therefore seemingly failed in its trust duty.

The Central Trust Company may also be justly criticized for collecting from the C. H. & D. fees for services rendered to the preferred stock syndicate. Part of a fee of $[illegible] paid by the railroad was for "receiving subscriptions to syndicate and issuing participant syndicate receipts therefor." This accounts for the absence of any such payments from the expenses of the syndicate.

The basis of distribution of the syndicate's funds worked to advantage in favor of Zimmerman and Hollins & Company. Their payments on their subscriptions had not been promptly made and therefore they were not entitled to receive interest on the same basis as the other subscribers, but under the distribution as made, they did. This was particularly flagrant in the case of the Hollins firm, for they made no payment whatever on their subscription till 18 days before the general distribution, and therefore profited unfairly to the extent of about $12,500.

When the retirement of the 5 per cent preferred stock was undertaken, the C., H. & D. owned 83 shares, having held the same in its treasury since the consolidation of 1895. President Zimmerman directed the sale of those 83 shares to Hollins & Company at the price of $110 per share. Under the contracts already described the C., H. & D. was obligated to buy them back at $122 per share and interest. Zimmerman had a $400,000 interest in the syndicate which received the profits on these 83 shares.

Of a piece with the foregoing is another transaction which is disclosed by the correspondence files of president Zimmerman. These show that in February, 1905, the board had failed to declare the regular dividend on the preferred stock. H. B. Hollins suggested to Zimmerman that the board be reconvened and the dividend declared, as otherwise the company's credit would be adversely affected. This suggestion president Zimmerman parried by advising Hollins & Company that the executive committee in New York could declare the dividend, and suggesting that Hollins & Company "please instruct Mr. Cumming." He did not agree that the company's credit

would be thus affected and stated further, "I do not think we will be able to get the balance of the stock in if we make this dividend." This would seem to indicate a further pressure on the preferred stockholders to induce them to sell their holdings to the Hollins syndicate and thereby add $12 per share to its profits. However, three days later the executive committee authorized payment of the usual quarterly dividend on the 5 per cent stock, although the by-laws provided that "dividends may be declared by the board whenever in their judgment the net earnings of the company shall warrant the same."

3. *Collateral trust note syndicate.*—The C., H. & D. secured the cash to pay its obligations on account of the 5 per cent preferred stock retirement from the sale of its 4½ per cent 3½-year collateral trust notes issued under an agreement dated March 1, 1905, with the Central Trust Company, as trustee. This indenture provided that there should be deposited as collateral $15,000,000, par value of C., H. & D. consolidated mortgage 4½ per cent 50-year bonds, a new issue dated January 2, 1905, and also preferred stock and "obligations" relating thereto which should be acquired with proceeds of the notes. In case the trust agreement of August 16, 1904, terminated during the life of the notes, all securities deposited thereunder were to be deposited under this indenture of March 1, 1905. This was in the midst of the Hollins régime. The issuance of the notes was authorized by the board on March 6, 1905, at which meeting authority was also voted the Hollins firm as fiscal agents of the company to sell the entire issue of $15,000,000 in par at 92½ and to pay themselves 2½ per cent on the par thereof as a commission, "it being understood also that they may participate in the purchase of such notes."

The trust agreement provided that $9,388,000 in par should be issued immediately and only for the purchase of the 5 per cent preferred stock and the obligations issued in connection therewith under the trust agreement of August 16, 1904. This amount evidently represented the number of bonds which it was estimated would be required to purchase the shares then owned by the syndicate or likely to be acquired by it. At a meeting on March 9, 1905, the board authorized the use, under the direction of the executive committee, of the proceeds from the remaining $5,612,000 for the retirement of the $5,500,000 of purchase money gold notes issued under the indenture of July 6, 1904, to pay $50 of the $125 per share paid for the 110,000 shares of Pere Marquette stock. The executive committee on the same day authorized the Central Trust Company of New York to acquire on behalf of the company all the preferred stock "obligations" at par and accrued interest and the $5,500,000 of purchase money notes at 90½.

On March 17 the executive committee directed the Central Trust Company to deliver $5,612,000 of the new collateral trust notes to or upon the order of H. B. Hollins & Company and the remaining portion of that issue, $9,388,000, to or upon the order of that firm upon the receipt in cash of 90 per cent of their par value. These acts of the board and executive committee were approved by the stockholders on October 10, 1905, by a blanket vote. The accounts and records of the C., H. & D. merely show that these $15,000,000 of collateral trust notes were sold at 90 and interest and the proceeds applied as aforesaid, but there is very much more to these transactions than is revealed by the carrier's books.

Besides voting to themselves the aforementioned commission of 2½ per cent on $15,000,000, or $375,000, H. B. Hollins & Company, together with certain officers and directors of the C., H. & D., received large profits from the operation of a syndicate formed to underwrite these $15,000,000 of notes. Its operations were conducted under the provisions of an agreement dated March 8, 1905, to which the C., H. & D. was a party, and whereby it bound itself to deliver the $15,000,000 of notes to the syndicate at 92½ and interest, the Central Trust Company of New York being syndicate manager. The trust company could not produce the original agreements, so that it is not possible to determine who executed it on behalf of the C., H. & D. Formal action on the agreement was not taken by the board or executive committee.

It is evident that this collateral trust note syndicate was formed and the disposition of the notes arranged for before their issue was formally voted by the C., H. & D. board, as before recited. Notices of allotments of subscriptions were sent out by the manager on March 9, 1905, and the executed subscription agreements were received from the subscribers on March 10, 1905. On that day the selling agents, Redmond & Company, a New York bond house, reported that their sales had aggregated $4,655,000, exclusive of $2,640,000 of notes withdrawn from the syndicate under the section of the agreement granting that privilege. On March 11 additional sales were reported, bringing the aggregate to $9,350,000, which, counting withdrawals, left only $3,010,000 out of the $15,000,000 then to be disposed of. The syndicate subscribers were never called upon to pay and never did pay one penny on their subscriptions.

The notes as sold by Redmond & Company brought 98 and interest for $15,000 and 97¾ and interest for $12,345,000, all having been turned over to them at 97½ and interest. The difference between the latter price and the 90 and interest received by the C., H. & D. was divided as follows: 4¾ per cent on $12,360,000 was credited to the syndicate; 2½ per cent on $15,000,000 was credited to H. B. Hol-

lins & Company, fiscal agents; and one-half of 1 per cent on $14,800,000 to the Central Trust Company.

In the table below are shown the subscriptions and subscribers' profits in the operation of this collateral trust note syndicate. The withdrawals of notes, aggregating $2,640,000, have to be allowed for, because the syndicate received no profits thereon. The Central Trust Company did not receive its one-half of 1 per cent on the $200,000 of notes withdrawn by F. P. Olcott, then its president.

Subscriber.	Amount subscribed.	Profits on subscription.
H. B. Hollins & Co.	[1] $2,250,000	$88,000
Hanover National Bank	450,000	18,000
Trust Co. of America	100,000	4,000
Kinnicutt & Potter	100,000	4,000
J. & W. Seligman & Co	300,000	12,000
William Salomon & Co.	250,000	10,000
Geo. W. Young	100,000	4,000
Lehman Bros	100,000	4,000
Strong, Sturgis & Co	200,000	8,000
Eugene Zimmerman	1,000,000	40,000
United States Mortgage & Trust Co	1,500,000	60,000
Landenburg, Thalmann & Co	[2] 1,000,000	....
Redmond & Co	1,200,000	48,000
Hallgarten & Co	[3] 1,500,000	32,400
Rudolph Kleybolte & Co	1,900,000	76,000
F. P. Olcott	[2] 200,000	....
Hudson Trust Co	100,000	4,000
Mechanics & Farmers Bank	100,000	4,000
Bank of America	[2] 100,000	....
A. H. Joline	20,000	800
A. Rathbone	30,000	1,200
J. N. Wallace	75,000	3,000
C. G. Hedge	25,000	1,000
E. C. Henderson	25,000	1,000
Central Trust Co. of New York	[4] 2,250,000	70,000
Geo. Sherman	25,000	1,000
Hugh J. Grant	[2] 100,000	....
Total	15,000,000	494,400

[1] $50,000 of notes withdrawn.
[2] Notes withdrawn equivalent to entire subscription.
[3] $690,000 of notes withdrawn.
[4] $500,000 of notes withdrawn.

The 4½ per cent on the $12,360,000 taken by the syndicate amounted to $525,300, of which $30,900, a one-fourth point, went to Redmond & Company as commission before the above distribution was made. Other profits taken by real insiders on this note issue were as follows:

Redmond & Company received $2,400 of commissions in addition to the $30,900 above mentioned and one-half point on the notes sold by them, which with subscription profits netted them $118,694.35, after paying agents' commissions and expenses.

The Central Trust Company received, in addition to its share of the syndicate profits, $70,000, its commission of one-half point on $14,800,000 less expenses, $70,324.65, and in addition $125,000 paid by H. B. Hollins & Company out of the latter's 2¼ per cent commission, or a total profit of $265,324.65 over and above the profits on $500,000 of notes withdrawn and which at the current selling price probably netted an additional $25,000.

The Hollins firm received its $88,000 in syndicate profits and $375,000 as a 2½ per cent commission on $15,000,000 of notes less $125,000 handed the Central Trust Company for some unknown reason, or $338,000 in all, plus profits on $50,000 of notes withdrawn.

Here again certain directors of the C., H. & D. profited directly or indirectly at the expense of the carrier. These were Eugene Zimmerman, who received profits of $40,000 from the syndicate; Rudolph Kleybolte, whose firm received $76,000 of profits and $11,100 in commissions; G. M. Cumming, representing the United States Mortgage & Trust Company, which received $60,000 of profits; its president, Geo. W. Young, also receiving $4,000 of personal profits; and J. N. Wallace, who received $3,000 of personal profits, he being fourth vice president of the Central Trust Company, the profits of which have already been detailed.

To summarize the cost to the C., H. & D. of retiring its 5 per cent preferred stock, one must proceed as follows: The price paid per share, $110, plus 5 per cent interest and $12 bonus, together with commissions, trustee fees, and miscellaneous expenses, brings the actual money outlay to an average of over $126 per share. But giving consideration also to the discount of 10 per cent suffered on the notes issued to furnish the cash for the redemption of the stock, it appears that for every $100 share of stock retired the company issued 3½-year notes bearing fixed interest at 4½ per cent to a par value of over $140. The preferred stock thus retired did not bear guaranteed dividends of 5 per cent or of any fixed amount, but was entitled only to such share of the profits as the directors should elect to thus distribute. It had paid regular dividends of 5 per cent per annum since the organization of the company in 1895.

This 5 per cent preferred stock was not listed on the New York Stock Exchange, but on the Cincinnati Exchange. During the year preceding the assumption of control by the common-stock syndicate the highest "bid" quotation reported was 107¾, the lowest, 102, and the average of 39 reported bids, 105½. The highest of the few reported "asked" quotations was 108; the lowest, 103.

The actual cancellation of the stock did not occur for several years, it being held in the meantime by trustees under certain C., H. & D. agreements. It was finally canceled pursuant to the plan of readjustment of the road's finances adopted in 1909 in connection with the purchase of C., H. & D. control by the Baltimore & Ohio.

4. *Premature retirement of noninterest-bearing notes.*—The records of the C., H. & D. furnish no clue as to why five and one-half millions of noninterest-bearing obligations were retired a year and three months before maturity through the issuance of notes bearing fixed interest of 4½ per cent per annum and in the face of the fact that

the noninterest-bearing notes were subject to retirement at the option of the company by conversion into common stock. We refer here to the use of the proceeds of $5,612,000 of the collateral trust notes to retire $5,500,000 of purchase money notes which had been issued to pay $50 of the purchase price of $125 per share for the Pere Marquette common stock. These proceeds at 90 and interest amounted to $5,064,830, which was credited to the C., H. & D. on the books of the Central Trust Company on March 21, 1905. Those books show that this credit was used to the extent of $4,977,500 in the acquisition of the $5,500,000 of purchase money notes at 90½, the balance of $87,330 being later applied on a demand note of the C., H. & D. All but $50,000 of the notes purchased for retirement were turned in by H. B. Hollins & Company. The significance of this lies in the fact that this firm had bought in many such notes at substantially less than the price paid by the C., H. & D.; in fact, at about 85. The exact extent to which the Hollins firm had assembled the notes at that price and profited in their retirement at 90½ is not disclosed.

5. *Retirement of 4 per cent preferred stock.*—The C., H. & D. had outstanding with the public on June 30, 1904, $1,074,500 in par of its 4 per cent preferred stock, consisting of $612,100 of the "A" and "B" series and $462,400 of the "Eagle" series. These amounts represented the portions of preferred stocks issued by the original Cincinnati, Hamilton & Dayton *Railroad* Company which was not exchanged for new 5 per cent preferred in the consolidation of 1895. This stock had been adopted as its first preference stock by the new company, and, while it did not carry voting rights, dividends of 4 per
annum were guaranteed thereon.
gust 27, 1904, the directors authorized president Zimmerman
e with the fiscal agents, H. B. Hollins & Company, for the
of this stock for the account of the company. At that time
gement had already been consummated. At the same meet-
was read and ratified a letter dated August 26, 1904, ad-
o the Hollins firm and signed on behalf of the road by
Zimmerman, and G. M. Cumming and Rudolph Kleybolte,
which embodied a memorandum of an understanding ar-
between the company and the fiscal agents whereby the
ing the 30 days following August 30, 1904, were to purchase
for the account of the company, at $100 per share flat, de-
f possible, $1 per share to be paid the attorneys for the 4
stockholders. Money advanced by the fiscal agents in so
s to be repaid at the expiration of five months, later changed
onths, from August 30, 1904, with interest at 5 per cent per
nd their commission was fixed at 2 per cent on the $1,074,-
e company's note, dated August 29, 1904, was issued to

Hollins & Company for this amount and was secured by 1,070 shares of stock of the Dayton Union Railway Company. It may be noted here that Hollins & Company were not made fiscal agents of the C., H. & D. until the 27th day of August, 1904, but had had dealings in that capacity before.

At a meeting on October 19, 1904, the stockholders ratified and approved the execution and delivery of the memorandum above described. Earlier on the same day the directors had authorized the substitution of this 4 per cent preferred stock in the place of Cincinnati, Indianapolis & Western Railway Company bonds pledged as security with the Central Trust Company of New York, as trustee under a C., H. & D. mortgage. The accounting department of the carrier was without official advice as to the issuance of the note of August 29, 1904, until the comptroller received the *paid* note from the president on December 3, 1904. This followed an advice to the company from Hollins & Company, December 1, 1904, which stated that 10,717 shares had been purchased to that date.

As was the case with the 5 per cent preferred stock, this 4 per cent stock was not fully and finally extinguished until 1909.

The retirement of this $1,074,500 of nonvoting stock cost the company par and $33,414.13 in cash, as follows:

Commission of 2 per cent on $1,074,500 paid H. B. Hollins & Company		$21,490.00
Interest at 5 per cent per annum paid H. B. Hollins & Company on note for $1,074,500, dated August 29, 1904	$12,983.55	
Less interest on amount realized from sale of C., I. & W. bonds	2,062.42	
		10,921.13
Services Hanover National Bank		1,000.00
Premium		3.00
Total		33,414.13

In addition to this cash loss, consideration must be given to the fact that in selling $1,162,000 par of Cincinnati, Indianapolis & Western bonds to acquire funds for the payment of the Hollins note, only $1,080,660 was realized. The C., H. & D.'s assets should accordingly have been scaled down $81,340. But that amount was charged to "construction C., I. & W. Ry.," and still remains among the recorded assets of the C., H. & D. in the general account "investments in affiliated companies—advances."

Further, since the C., H. & D. was paying the interest, 4 per cent, on the Cincinnati, Indianapolis & Western bonds in the hands of the public for the use of that company's property, the sale of $1,162,000 of those bonds to retire $1,074,500 of guaranteed 4 per cent

stock added a burden of 4 per cent per annum on $87,500 to the fixed charges of the C., H. & D.

6. *Prince's claim for additional commissions.*—It will be remembered that the C., H. & D. directors, during the meeting of July 7, 1904, contracted, as one of the considerations in the purchase through F. H. Prince & Company of the Pere Marquette stock, to pay that firm forthwith $250,000, in cash, as commissions. In the same contract the railroad also agreed to pay Prince & Company "such further reasonable compensation and commission as shall be agreed between the bankers and the committee appointed by the railway company." The meeting appointed as the committee president Zimmerman and directors G. M. Cumming and Eben Richards.

This committee reported on January 7, 1905, that it had caused $62,500 to be paid to Newman Erb on account of the commission due to F. H. Prince & Company. This was done by a loan arranged by Hollins & Company through the United States Mortgage & Trust Company, and went to Newman Erb personally by reason of his arrangement with Prince. The board approved this action.

In the *Bradford Case, supra,* Newman Erb testified that he received $62,500 from F. H. Prince & Company as compensation for his services in aiding in bringing the two properties together. Up to the meeting of the C., H. & D. board on July 7, 1904, Erb had been one of the most influential promoters of the C., H. & D. syndicate, but assurances that he should have representation on the new board were not fulfilled. On that account and because of his objections to the retirement of the preferred stock he demanded that his interests be bought out. An agreement to pay him a commission of $75,000 was part of the compromise effected with Prince & Company at that time. When this obligation came due, further disagreement arose, which finally resulted in his accepting $62,500 cash in settlement, that sum being placed to his credit with the United States Mortgage & Trust Company early in January, 1905. This coincidence of dates, amounts, and circumstances would indicate that Prince paid off his debt to Erb by having the amount voted to himself as a further payment of commissions.

Thereafter the matter of further commissions hung fire for several months, during which the committee underwent several changes in membership, until, on September 28, 1905, James Phillips, jr., was appointed to act with Cumming and Robison in settling the Prince claim. Later on that day this committee reported that Prince demanded $285,000 in full settlement, and the board then ordered that—

this company offer to pay Prince & Company $200,000 in full settlement * * * and that upon the acceptance of this offer and upon Prince & Company furnishing a sworn statement or satisfactory evidence to H. B. Hollins & Company,

fiscal agents, that they had paid from commissions heretofore advanced to them a loss of about $90,000 upon the Toledo Railway & Terminal Company bonds, that this company pay said $200,000 to Prince & Company.

The loss of $90,000 referred to is understood to be the sum paid to the Toledo-St. Louis interests to make up the difference between the amounts paid them by Rudolph Kleybolte & Company for their terminal company bonds and the price of par guaranteed to them by Prince and Erb as part of the considerations given to secure their large subscription to the C., H. & D. common-stock syndicate.

It should also be observed that when this offer of settlement was subsequently reported by the president to the stockholders at the meeting of October 10, 1905, it was in language that contained no reference whatever to the condition of a proof of loss on terminal company bonds. The president's report stated that a final settlement at $200,000 had been made and accepted by Prince & Company, which action was approved by the stockholders. It is quite significant that final action of the board and stockholders in this matter was all subsequent to the sale of C., H. & D. control to J. P. Morgan & Company for the Erie, and just before the actual assumption of that control.

This payment of commissions to Prince & Company for alleged services was preposterous. On the carrier's record this firm had secured the right and option to offer for sale to the C., H. & D. 110,000 shares of Pere Marquette stock, had secured authority to offer a trackage contract with the terminal company, had secured the right to certain "privileges" for the acquisition of control of the Chicago, Cincinnati & Louisville, and had secured certain contracts for sale of the terminal company bonds to Rudolph Kleybolte & Company. This record, as already set forth, reveals that these matters were all a part of the promoters' general scheme.

Viewed from the angle of expectations, however, Prince's actual claims were really very modest. As shown in Appendix 10, it was a feature of the original plan of the promoters that $2,500,000 in cash was to be collected by the "bankers" in the Pere Marquette stock deal, as commissions, to inure to the benefit of the syndicate.

When the Erie management assumed control the new executive committee, on November 29, 1905, rescinded all previous action of the board or the executive committee authorizing the payment of the Prince claim. No further payment was made beyond the original $250,000 and the $62,500 which went to Erb, although suit was brought against the C., H. & D. to enforce payment of further large sums. This suit was lost, but the expense thereof to the C., H. & D. was $11,455.66.

7. *Michigan Securities Company.*—Early in 1905 the C., H. & D. management was confronted with the question of taxation under

Ohio laws of the company's holdings of capital stock of foreign corporations. These holdings then were as follows:

	Book value.
110,000 shares Pere Marquette common	$13,750,000.00
71,158 shares Cincinnati, Indianapolis & Western common	2,303,252.52
644 shares Dayton & Union common	33,200.00
7,501 shares Southwestern Construction Co	517,020.60
12,500 shares Cincinnati, Findlay & Fort Wayne common	1.00
12,000 shares Ashland & Ironton Bridge Co	0
	16,603,474.12

Thereafter, on April 6, 1905, the executive committee met, together with representative of counsel, and received from the Michigan Securities Company, by Samuel B. Lawrence, president, a proposal to purchase substantially whatever equity the C., H. & D. had in the above-named securities for the consideration of $20,000, a further consideration to be given when the shares of the Southwestern Construction Company should be freed from all encumbrance. This offer was accepted, and a form of agreement and conveyance was adopted and subsequently executed, the same bearing date April 6, 1905, and specifically conveying the following property, subject to the terms under which same was pledged:

110,000 shares Pere Marquette.
70,158 shares Cincinnati, Indianapolis & Western.
644 shares Dayton & Union.
7,500 shares Southwestern Construction Company.
12,496 shares Cincinnati, Findlay & Fort Wayne.
12,000 shares Ashland & Ironton Bridge Company.

Subsequently, by agreement dated August 31, 1905, the error of including only 70,158 instead of 71,158 shares of Cincinnati, Indianapolis & Western stock in the bill of sale was corrected.

The Michigan Securities Company was a New York corporation, apparently organized upon the advice of general counsel Thomas H. Tracy to president Zimmerman. Its entire capital stock issue of $20,000 was purchased by the C., H. & D. as a result of resolutions passed by the executive committee on April 27, 1905. When the fiscal year to June 30, 1905, was drawing to a close the accounting official of the railroad was in a quandary as to how he should adjust his books in view of the sale to the Michigan Securities Company for $20,000 of capital stocks for which the C., H. & D. carried asset accounts aggregating $16,603,474.12.

However, along in August, 1905, and then only after the question had been referred to the general solicitor and by him to New York counsel, the adjustment was accomplished by writing up $33,201, the amount paid for the stock of the Michigan Securities Company, in a new asset account, and carrying in another new asset account styled, "Liability interest in stocks owned by the Michigan Securi-

ties Company," the amount of $16,570,273.12. These together replaced the former asset accounts wherein were carried the stocks that had been sold.

In September, 1907, the comptroller who had faced the difficulty of adjusting these accounts in 1905, in a letter of explanation to receiver Judson Harmon, stated that "so far as accounting is concerned this is a very unusual transaction, and the whole matter was handled under instructions of H. B. Hollins & Company, and Davies, Stone & Auerbach, attorneys for the C., H. & D. at the time the entries were put on C., H. & D. books."

In connection with the discussion of the Ashland & Ironton Bridge Company, it is pertinent that on September 6, 1905, the board authorized amendment of the bill of sale to the Michigan Securities Company by striking therefrom all reference to the bridge company's stock. The date, September 6, is especially significant in view of the fact that Hollins & Company's interests in the C., H. & D. were sold to J. P. Morgan & Company on September 9, 1905.

In passing it may be noticed that none of the stocks sold were ever delivered to the securities company, and that eventually, when the control of the C., H. & D. had finally passed to the Baltimore & Ohio, that management on January 11, 1912, authorized the abrogation and rescission of the bill of sale and agreement bearing date of April 6, 1905. Simultaneously it was resolved that the Michigan Securities Company should be dissolved, and this was accomplished in the July following.

The apparent aim of this subterfuge was to escape the possible effect of an Ohio law, applicable to individuals, which required the payment of taxes by residents of Ohio on the stock, whether pledged or entirely free and unencumbered, of foreign corporations whose property, or an essential part thereof, is situated outside the state of Ohio.

8. *Guaranty of Pere Marquette bonds by C., H. & D. and syndicates dealing therein.*—During the Zimmerman-Hollins régime in 1904–5 the C., H. & D. indorsed its guaranty of both principal and interest on $9,207,000 of Pere Marquette refunding mortgage 4 per cent bonds dated January, 1905, due 1955. This bond issue was dictated by a need for funds on the part of the Pere Marquette, to meet maturing short term notes, equipment obligations, unpaid vouchers, etc., which developed before the Zimmerman-Hollins management had long been in control. Plans were made for this new Pere Marquette 50-year mortgage to provide for such needs and also to cover the refunding of underlying securities.

The first block of these new 4 per cent bonds, $6,000,000 in par value, was authorized by the Pere Marquette board on January 6, 1905, to be delivered to the company's treasurer and by him to H. B.

Hollins & Company in accordance with a contract made with that firm for the sale and purchase thereof. Nearly two months previous to this date action had been taken by the corporate authorities of the C., H. & D. and by the Hollins firm bearing upon the marketing of those securities.

At a meeting of the executive committee of the C., H. & D. on November 18, 1904, directors Cumming, Zimmerman, and Tracy being present, there was read a letter of that date from Hollins & Company to president Zimmerman which stated that pursuant to arrangements made with him the Hollins firm had bid in their own names for the said block of bonds at 87½ and interest, which bid had been accepted by letter from the Pere Marquette dated the 14th instant, transmitted therewith. That letter to the president also stated that although the bid had been made by the Hollins firm in its own name, it really had been made by them as fiscal agents of the C., H. & D. and they therefore requested the adoption of formal resolutions ratifying and adopting that purchase. The letter added that the fiscal agents had arranged a resale of the bonds at 87½ and interest, provided the C., H. & D. would guarantee the same as to principal and interest, and stated further:

> The price paid to the Pere Marquette Railroad Company was predicated upon a resale of the bonds guaranteed by your company, as above stated, and in the transaction the Pere Marquette Railroad Company will receive the full benefit of the entire pecuniary consideration; your company, as the owner of a very large amount of the stock of the Pere Marquette Railroad Company, and therefore vitally interested in its welfare, in addition to the other reasons we have discussed, receives a benefit, which, in our opinion, justifies you in guaranteeing the bonds as above suggested.

The committee voted to ratify, approve, and confirm said purchase on the terms named in the correspondence between the Pere Marquette and the Hollins firm as for and on account of the company. The committee also authorized (1) the indorsement of the company's guaranty of principal and interest on the $6,000,000 of bonds; (2) the sale of the indorsed bonds to Redmond & Company at the price named; and (3) the fiscal agents to enter into all contracts necessary to carry out such sale, their compensation for such services to be paid by Redmond & Company. This purchase, guaranty, and sale was ratified and confirmed by the stockholders on January 12 and by the board on January 18, 1905.

The records of the Central Trust Company of New York, trustee under this Pere Marquette mortgage, show that cash was received by it on January 27, 1905, covering the delivery of 201 bonds at 87½ and interest, and on January 30 covering 5,799 bonds at the same rate. Aside from this and the records as to the disbursement of these funds, nothing further is available from the carrier's records

and accounts respecting the bonds. But other facts of record in this proceeding reveal another syndicate, the operations of which will now be taken up.

Redmond & Company were syndicate managers for the syndicate formed to underwrite these bonds under an agreement dated November 22, 1904. As early as the 12th of that month they had received acceptances from foreign subscribers for $375,000 in answer to cablegrams of the previous day which contained the following:

Have bought for January delivery $6,000,000 Pere Marquette Refunding 4's, guaranteed by Cincinnati, Hamilton & Dayton, at 88.

Redmond & Company did not produce any contract embodying these terms, and it will be noted that the C., H. & D. had not at that date authorized any such guaranty. Coincident with such authorization, on November 18 Eugene Zimmerman for the C., H. & D. addressed a letter to Redmond & Company offering them the bonds at 87½ and interest, the price paid by the C., H. & D. The bonds and mortgage were to be in such form as Redmond & Company's counsel might approve, and payment was to be made when and as they were ready for delivery. The offer was accepted on the same day.

According to the syndicate agreement the managers had purchased the bonds at 87½ and interest, payable on or about January 1, 1905, and the syndicate agreed to pay 88 and interest therefor, Redmond & Company not to receive any other compensation for their services as managers. All the acceptances of interest in the syndicate were received by December 7, but as before stated actual deliveries of and payments for the bonds were not made before the last of January following. The bonds were all sold by the syndicate before they were delivered by the C., H. & D. and the subscribers consequently made no payments whatever on their subscriptions. The following statement shows the operations of the syndicate:

RECEIPTS.

1905.			
Jan. 30 and 31. Sold 6,000 bonds as follows:			
	25 at 88 and interest	$22,080.56	
	5,543 at 92 and interest	5,117,345.67	
	222 at 92½ and interest	206,043.11	
	130 at 92¾ and interest	120,993.87	
	80 at 93 and interest	74,642.97	
			$5,541,106.18

DISBURSEMENTS.

Jan. 27. For 201 bonds at 87½ and interest	176,455.67
Jan. 30. For 5,799 bonds at 87½ and interest	5,092,810.66
Feb. 1. Listing bonds, etc., Amsterdam	800.00

Feb.	1.	Commission one-fourth per cent on 303 bonds		$757.50
Feb.	2.	Cash for extra work		370.00
Feb.	2.	Strong & Cadwallader, for legal expenses		9,015.00
Feb.	3.	Rudolph Kleybolte & Co., forward expense on 988 bonds		1,151.83
Feb.	6.	Advertising, cables, and sundry expenses		3,000.00
Feb.	6.	Redmond & Co., syndicate manager's commission, one-half per cent on 6,000 bonds		30,000.00
		Selling commission, one-half per cent, as follows:		
Feb.	6.	Post & Flagg	$2,710	
Feb.	6.	Rudolph Kleybolte & Co	10,125	
Feb.	6.	Richardson & Clark	375	
Feb.	6.	Banque Federale, Zurich	50	
Feb.	6.	Basler Handelsbank, Basel	870	
Feb.	6.	Messrs. Van Oss & Co., The Hague	2,500	
Feb.	6.	Messrs. Zahn & Co., Basel	25	
Feb.	6.	Messrs. de Speyr & Co., Basel	10	
Feb.	6.	Alexander Thomas & Co	25	
Feb.	7.	Redmond & Co	13,185	
				29,875.00
Feb.	7.	Syndicate profits		196,870.52
				5,541,106.18

The selling commissions were paid under a provision of the syndicate agreement that subscribers who sold bonds on the syndicate's account should receive one-half per cent commission.

The syndicate profits were disbursed among the subscribers on February 7, 1905, according to the syndicate's records, as follows:

Participants.	Accepted.	Participation.	Profit.
	1904		
Rudolph Kleybolte & Co		$1,950,000	$64,250.65
Post & Flagg	Nov. 30	250,000	8,237.26
Keech, Loew & Co	Nov. 25	100,000	3,294.90
Kinnicutt & Potter	do	250,000	8,237.26
H. B. Hollins & Co	do	400,000	13,179.61
Lehman Bros	Nov. 23	100,000	3,294.90
Geo. W. Young	Dec. 5	100,000	3,294.90
Eugene Zimmerman	Dec. 2	250,000	8,237.26
Central Trust Co. of New York	Nov. 30	750,000	24,711.80
Henri B. Corse	Nov. 23	500,000	16,474.52
Thos. H. Tracy	Nov. 28	50,000	1,647.45
J. & W. Seligman & Co	Nov. 25	200,000	6,589.80
Strong, Sturgis & Co	Nov. 23	100,000	3,294.90
Richardson & Clark	Nov. 25	50,000	1,647.45
W. G. Willcox	Nov. 30	25,000	823.73
First National Bank, Baltimore	Dec. 7	50,000	1,647.45
J. F. B. Mitchell, jr	Nov. 17	5,000	164.75
Swiss Bankverein, London	Nov. 12	50,000	1,397.45
Messrs. de Speyr & Co., Basel	do	50,000	1,397.45
Basler Handelsbank, Basel	do	50,000	1,397.45
Messrs. L. Behrens & Sohne, Hamburg	do	50,000	1,397.45
Messrs. Zahn & Co., Basel	do	25,000	698.73
Messrs. Mallet Freres & Cie, Paris	do	100,000	2,794.90
Banque Federale, Zurich	do	50,000	1,397.45
Messrs. Van Oss & Co., The Hague	Nov. 14	25,000	698.73
Redmond & Co		445,000	14,662.32
Redmond & Co., one-half per cent for participation			2,000.00
		5,975,000	196,870.52
Albert Willcox (withdrawn 11-30 H. S. R.)	Nov 25	25,000	
		6,000,000	196,870.52

Two of the three members of the C., H. & D. executive committee who voted in favor of their company's purchase, guaranty, and sale of these bonds, all at the same price, were Eugene Zimmerman and Thos. H. Tracy, who were also represented in this syndicate, participating in the profits to the extent of \$8,237.26 and \$1,647.45, respectively. Eugene Zimmerman was also a member of the Pere Marquette board at the time. Other C., H. & D. directors voting in favor of this transaction were Rudolph Kleybolte, whose firm was a subscriber for \$1,950,000, receiving \$64,250.65 of profits in addition to selling commissions of \$10,125, and J. N. Wallace, fourth vice president of the Central Trust Company, which had subscribed for \$750,000 and received profits of \$24,711.80. George W. Young, who subscribed for \$100,000 and received profits of \$3,294.90, was president of the United States Mortgage & Trust Company, which was represented on the C., H. & D. board by G. M. Cumming, the third member of the executive committee voting in favor of the transaction. Hollins & Company, in control of the C., H. & D., received profits of \$13,179.61 on a subscription of \$400,000.

The "purchase and sale" of these bonds by the C., H. & D. was obviously to give greater color to the legality of its guaranty thereon. The purpose of the guaranty was, of course, to add as much as possible to the security of the bonds and to the marketability thereof. In this connection it is of interest to note that the purchase and sale of the bonds, effected in January, 1905, were not recorded in the accounts of the C., H. & D. until the following June.

The Pere Marquette later put out further bond issues under the same mortgage, and on these the C., H. & D. again indorsed its guaranty of principal and interest. This was done under authority voted by the board on March 24, 1905, authorizing the fiscal agents to purchase—

all refunding mortgage bonds of the Pere Marquette Railroad Company when and as from time to time the same are issued, upon such price and terms as they shall deem best.

The fiscal agents were authorized to sell the bonds after the indorsement of the guaranty on such terms as they might deem best. Further corporate action was taken on this matter on April 27, 1905, when the executive committee voted that a letter be sent to the board of the Pere Marquette offering the latter 35,000 shares of terminal company stock at \$47 per share. In the concluding paragraph the C., H. & D. offered to buy up to \$4,000,000 of the refunding bonds at 90 and interest any time within six months. The C., H. & D. stockholders approved these acts on April 29, at which meeting there was presented a resolution passed by the Pere Marquette board on April 27 accepting the offer in the C., H. & D. letter just mentioned.

The first additional block of the bonds acquired by the C., H. & D. amounted to $2,361,000 in par. These the fiscal agents reported on June 21, 1905, had been purchased at 90 and interest and had been sold at 85½ and interest to a syndicate represented by the Central Trust Company of New York. The record shows that the latter company was manager of this syndicate, which was formed under an agreement dated June 8, 1905, and which provided for the purchase of $2,558,000 of bonds at 89 and interest, from the Central Trust Company. The syndicate subscribers were as follows:

Redmond & Co	$1,390,000
Hallgarten & Co	200,000
Rudolph Kleybolte & Co	200,000
H. B. Hollins & Co	500,000
Lawyers Title Insurance & Trust Co	50,000
Central Trust Co. of New York	218,000
Total	2,558,000

Of the Redmond subscription $180,000 was allotted to sundry subparticipants, but who they were or what other subdivisions of subscriptions were made is not of record.

The Central Trust Company had bid for the bonds on June 7 at the price of 89 and interest, and the bid was formally accepted on the following day by Hollins & Company as fiscal agents of the Pere Marquette. Then, on June 10, Hollins & Company addressed a letter to the trust company reading as follows:

> Out of the commission of 3¼ per cent to be paid us upon the purchase of $2,558,000 par value of Pere Marquette Railroad Company refunding mortgage 50-year 4 per cent gold bonds, we hereby agree to pay to you 1¼ per cent for services in forming a syndicate to take over said bonds, and to Messrs. Redmond & Company 1 per cent for services in selling the same.

The first block of bonds, the identical $2,361,000 previously referred to, was purchased by the syndicate on June 21, 1905, at 89 and interest, the subscribers paying into the syndicate funds on that day their pro rata proportion of such price, $2,145,884.74, which averaged $908.89 per bond. Apparently the bonds were delivered at once to the subscribers, subject to call by the manager, except that Redmond & Company withdrew 150 bonds from the syndicate control, paying $750 for the privilege. The second block of bonds, 197 in number, was purchased by the syndicate on September 28, 1905, Redmond & Company furnishing the funds therefor. These advances were not repaid until the close of the syndicate on January 19, 1906. In the case of the 197 bonds, the manager paid Hollins & Company 86¾ and interest and paid 1¼ per cent commission to itself and 1 per cent to Redmond & Company. This procedure differed from that followed in the purchase of the first block, for there the price of

89 and interest was paid in full to Hollins & Company, who paid the commissions to the other two parties. The foregoing transactions are summarized in the following statement of receipts and disbursements:

RECEIPTS.

1905.		
June 21.	Payments by subscribers for 2,361 bonds at 89 and interest	$2,145,884.74
Sept. 28.	Payment by Redmond & Co. for 197 bonds at 89 and interest	177,284.83
June 22 and 28.	Payment of one-half per cent by subscribers who withdrew 150 bonds	750.00
1906.		
Jan. 19.	Payments by subscribers for 197 bonds at 89 and interest, and for net syndicate expenses	176,728.70
	Total	2,500,597.77

DISBURSEMENTS.

1905.		
June 21.	To H. B. Hollins & Co. for 2,361 bonds at 89 and interest	$2,145,884.58
Sept. 28.	To H. B. Hollins & Co. for 197 bonds at 86¾ and interest	172,801.83
Sept. 28.	To Redmond & Co. for 1 per cent on 197 bonds	1,970.00
Sept. 28.	To Central Trust Co. of New York for 1¼ per cent on 197 bonds	2,462.50
1906.		
Jan. 19.	To Redmond & Co. for 197 bonds at 89 and interest	176,262.47
Jan. 19.	To Redmond & Co. for legal services of Joline, Larkin & Rathbone ($500) and expenses	648.25
Jan. 19.	To Joline, Larkin & Rathbone for additional legal services and expenses	572.98
May 31.	To balance	.16
	Total	2,500,597.77

From the sale of these $2,558,000 of bonds the C., H. & D. received credit at 85½ and interest, the difference between which and the sums paid for the bonds by the syndicate, 89 and interest, being absorbed by—

Redmond & Co	$25,580
Central Trust Co. of New York	31,975
H. B. Hollins & Co	31,975

evidently in accordance with the arrangement outlined in the letter of Hollins & Company dated June 10, as previously quoted.

The syndicate subscribers did not fare so well. Redmond & Company had been appointed sole selling agents to handle the bonds, they to receive a cash commission of 1 per cent on the $2,558,000, payable upon the completion of the syndicate. On August 8, 1905, they reported that they had sold $255,000 of the bonds, delivery of

which was made to them by the syndicate subscribers three days later. These 255 bonds had been sold at various times from June 14, 1905, 224 at 93 and interest less three-fourths for commissions, and 31 at 92½ and interest less one-half for commissions, which, with bank interest, amounted in all to $235,880.41. The subscribers turned over their pro rata proportion of bonds and received $925.02 per bond, representing a gross profit of about $16.13 per bond, not allowing for interest on money invested. This was their only profit.

Under the provisions of its agreement the syndicate was to terminate on December 7, 1905, but the managers, by notice dated December 6, extended the term for three months. This action was practically contemporaneous with the appointment of a receiver for the C., H. & D. and Pere Marquette, so that it is not surprising to find that the syndicate managers formally terminated the syndicate by notice dated January 18, 1906, which reads in part as follows:

> We have adopted this course on account of the existing situation of the railroad company, in which connection we desire to direct your attention to the receiver's statement that the said bonds are unquestioned obligations of the railroad company, and that the mortgaged property is of a value much greater than the amount of outstanding refunding bonds and interest thereon.

So far as the syndicate records indicate, bonds were left on subscribers' hands on January 19, 1906, as follows:

Redmond & Co	$1,253,000
Hallgarten & Co	184,000
Rudolph Kleybolte & Co	179,000
H. B. Hollins & Co	447,000
Lawyers Title Insurance & Trust Co	45,000
Central Trust Co. of New York	195,000
Total	2,303,000

Undoubtedly the credit of the two railroads had waned fast during the summer of 1905.

The profits in this syndicate were small, though the Hollins firm reduced the carrier's proceeds from the 87½ realized on the $6,000,000 block to 85½ on these $2,558,000, thereby allowing the payment of 1 per cent commissions to Redmond & Company and 1¼ per cent to the Central Trust Company, incidentally providing $31,975 for themselves. In this connection it should be noted also that the Redmond firm was represented on the board of the Pere Marquette by William Redmond Cross, he having been elected a director on March 7, 1905.

Thus far $8,558,000 of the $9,207,000 of these Pere Marquette refunding bonds on which the C., H. & D. guaranty was indorsed have been accounted for. The remaining $649,000 are recorded as having been sold to the C., H & D. at 90 and interest prior to Sep-

tember 25, 1905. On October 4 and 17 the Hollins firm notified the C., H. & D. treasurer of the sale of said bonds at 89 less 3½ per cent commission. Though this sale was to the Central Trust Company, the bonds evidently were not included in the transactions of the syndicate last described. How much the purchase of the control of these properties by the Morgan interests at about this time may have had to do with this last transaction can only be surmised. The prices warrant the conclusion that the 3½ points lost by the C., H. & D. were divided up as before, namely, 1 point to Redmond & Company and 1¼ points each to the Central Trust Company and H. B. Hollins & Company.

Inasmuch as the C., H. & D. had purchased the last blocks of bonds, amounting to $3,207,000, from the Pere Marquette at 90 and interest, the sale thereof at 85½ and interest resulted in a loss which amounted to $144,315. The Pere Marquette board on September 28, 1905, authorized the charging of $106,245 of this against that company in its open account with the C., H. & D. Upon authority of the receiver, $37,577.50 of the balance was similarly adjusted in the January, 1906, accounts. The remaining $492.50, through an accounting error, was apparently never adjusted. Thus the C., H. & D. was relieved of practically all of its direct loss on account of the purchase and sale of the $9,207,000 Pere Marquette refunding bonds guaranteed by it, the same being shifted to the Pere Marquette.[1]

9. *Lease of the Pere Marquette by the C., H. & D.*—Several meetings of the directors and of the stockholders of the C., H. & D. were held to consider the leasing of the lines of the Pere Marquette as contemplated from the inception of the union of the two properties on July 7, 1904, and a number of changes were made in the provisions of the proposed lease up to the final action thereon by all

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[1] The plan and agreement for the reorganization of the Pere Marquette Railroad Company, dated October 30, 1916, contains the following with respect to the guaranty by the C., H. & D. of the $9,207,000 of Pere Marquette refunding mortgage bonds:

"$9,207,000 face amount of the refunding mortgage bonds bear a guaranty by the Cincinnati, Hamilton & Dayton Railway Company of the payment of the principal and interest thereof. The reorganization managers have entered into arrangements under which it is expected, if a sufficient amount of refunding mortgage bonds bearing such guaranty are deposited under the plan by March 1, 1917, to immediately cancel the said guaranty borne by refunding mortgage bonds at any time deposited under the plan against a net cash payment sufficient to provide for the distribution not later than upon the consummation of the reorganization to holders of certificates of deposit for refunding mortgage bonds bearing such guaranty, at the rate of $12.50 for each $1,000 face amount of such bonds. Whether or not such arrangement be carried out, any net amounts received by the reorganization managers, or their successors in interest, upon or in discharge and cancellation of such guaranty (which may be discharged and canceled prior to the consummation of the plan), after defraying all costs and charges in connection with the collection or receipt thereof, including counsel fees, will be distributed pro rata among the holders of certificates of deposit for refunding mortgage bonds guaranteed as aforesaid (or the registered holders of such other certificates or receipts as may be issued on the consummation of the reorganization on the surrender of such certificates of deposit) under such reasonable regulations as the reorganization managers may prescribe."

parties on March 6, 1905. Under the ultimate arrangement actual delivery of possession to the C., H. & D. occurred at one minute past midnight of that day.

The contract of lease was dated March 1, 1905, and provided an outright lease for 999 years of all the properties then or thereafter owned, controlled, or operated by the lessor. Its two important provisions may be summarized as follows:

(1) Upon execution and delivery of the lease the lessor agreed to deliver all its treasury stock to the lessee, being 14,878 shares of its preferred and 18,344½ shares of its common, to be held and disposed of as the lessee might see fit, provided that if the lease was terminated for any cause within ten years from its date the lessee would return said shares, except that during said period the lessee might mortgage, sell, or dispose of the stock, the proceeds to be impressed with a trust for the expenditure thereof for additions, extensions, and rolling stock for the lessor which should be its exclusive property.

(2) The C., H. & D. covenanted to pay as rental a sum equal to 1 per cent on the common stock which was to be considered in full of all arrears to January 1, 1905, and to pay semiannually thereafter sums equivalent to dividends of 4 per cent on preferred stock and 5 per cent on common stock in addition to organization expenses, interest, taxes, and rentals for trackage rights and leased lines. To secure the payment of the rental and the proper maintenance of the properties the lessee agreed to deposit the entire capital stock, 1,070 shares, of the Dayton Union Railway Company with a trustee, and this was accomplished under a deposit agreement with the Central Trust Company of New York.

In the accounts of the C., H. & D. the accrual of rental under this lease covered only the dividends as provided therein and these dividends were computed on the amount of stock held by the outside public, $10,512,200 par value of preferred and $3,165,550 par value of common; in other words, no dividends were accrued on the 110,000 shares of common which the company had purchased nor on the 14,878 shares of preferred and 18,344½ shares of common acquired under the lease. But even on this basis the addition to the fixed charges of the C., H. & D. would amount to at least $578,765.50 per annum, contingent, of course, upon the failure of the Pere Marquette to earn the dividends. That contingency had to be met later. How far the C., H. & D. came from earning this additional burden is shown elsewhere. The rental was paid to July 1, 1905, later accruals being written off the books. The subsequent history of this lease is related in connection with the efforts of the Morgan management to free the C., H. & D. from some of the burdens laid upon it during the Hollins régime.

10. *Purchase of Toledo Railway & Terminal Company stock.*—We come now to a transaction on account of which the general counsel of the Pere Marquette, after investigation, prepared for the prosecution of certain individuals connected with the management

of the C., H. & D.-P. M. system and refrained only because he thought he saw opportunity to recover a substantial amount for his company by adopting another course. We refer to the purchase of the entire outstanding 35,000 shares of the practically worthless capital stock of the terminal company by the C., H. & D. and the immediate sale thereof by it to the Pere Marquette at an advanced price. The details of this transaction appear in the story of the construction, financing, and sale of the terminal company set forth in Appendix 12, but its salient facts are repeated here because of their importance.

It appears that contemporaneously with the negotiations for the subscriptions of the Toledo-St. Louis interests to the C., H. & D. common-stock syndicate, other and separate negotiations for the sale of their terminal company stock had been conducted by them through an unnamed agent "who is in a position to negotiate with the proposed purchasers." The best results of those negotiations up to April 26, 1904, appear to have been an offer of $10.50 per share. This "agent" demanded a commission of at least $10,000, to be increased if he succeeded in securing a still better price. How much further those negotiations proceeded at that time and in the months following, the record does not disclose.

It was not until April 27, 1905, that corporate action on the purchase of this stock was taken by the C., H. & D. It had been agreed upon by those in control on March 3, 1905, at a meeting in New York in which Thos. H. Tracy, Eugene Zimmerman, H. B. Hollins, and his partners, Govin and Burke, participated. Tracy represented the sellers. The result of that meeting was a formal offer from the construction company, made by Tracy as its president, to sell its terminal company stock to the C., H. & D. or to H. B. Hollins & Company at $41 per share, net, cash to be paid on delivery April 15, but conditioned upon the St. Louis group being privileged to put in their stock upon like terms. The offer was indorsed with an acceptance by Zimmerman as president of the C., H. & D., subject to the approval of the board or executive committee and subject also to the declination of the Hollins firm to purchase. By a letter of the same date that firm stated that it would recommend that the C., H. & D. board or executive committee approve the purchase on the basis named. In addition, Tracy had the "positive personal promise," as he himself expressed it, of Zimmerman and each of the three members of the Hollins firm that the deal would be carried through.

On April 12 the stock was forwarded to the National Bank of Commerce, New York City, with instructions to deliver to H. B. Hollins & Company on the 15th. This was done, and the $41 per

share received therefor was credited in the proportion of 24,402.778 shares to the Toledo interests and 10,597.222 shares to the St. Louis interests. In the same proportion, these parties bore a commission of $42,000 paid by them to "New York brokers."

In addition to their share of this commission, the St. Louis interests deducted from the gross receipts $13,478.12, representing a like proportion of notes given to pay the interest due January 1, 1905, on the bonds of the terminal company, and also $2,744.06 for other expenses, leaving a net sum of $405,517.27 to be distributed among the St. Louis underwriters. This sum was not disbursed in cash, except the profit accruing to the Commonwealth Trust Company itself, but was applied in part payment of advances made on the individual notes given to the Commonwealth Trust Company in connection with their joint subscription to the C., H. & D. common-stock syndicate. This division of the net profits was as follows:

Commonwealth Trust Co	$61,757.62
Charles H. Turner	6,696.62
L. B. Pierce	33,483.09
L. B. Tebbetts	13,393.23
Elias Michael	6,696.62
A. D. Brown	13,393.23
Edw. F. Goltra	13,393.23
Otto F. Stifel	13,393.23
T. W. Carter	26,786.48
James T. Drummond	13,393.23
Samuel C. Davis	13,393.23
S. W. Fordyce	35,715.28
R. M. Scruggs estate	13,393.23
C. G. Knox	13,393.23
S. M. Dodd	13,393.23
C. G. Warner	13,393.23
W. D. Orthwein	13,393.23
John E. Pilcher	13,393.23
Russell Harding	13,393.23
Altheimer & Rawlings Investment Co	13,393.23
F. E. Marshall	6,696.62
Morgan, Bryan & Christie	13,393.23
W. F. Nolker	6,696.62
Chas. A. Stix	3,348.32
Wm. Stix	3,348.32
Jesse D. Dana	13,393.23
Total	405,517.27

The profits of the Toledo interests evidently were not all disbursed upon the consummation of the sale. Their gross receipts were $1,000,513.89. The record shows, however, that a dividend of $650,000 on the stock of the construction company was paid on April 22, 1905, as follows:

D. Robison, jr., & Sons Co	$126,750.00
Edward Ford	126,750.00
John Cummings	91,000.00
Geo. G. Metzger	60,666.67
King & Tracy	30,333.33
Wm. Hardee	91,000.00
James J. Robison	61,750.00
James J. Robison, trustee	61,750.00
Total	650,000.00

There is much significance in the fact that the Toledo-St. Louis interests received only $41 per share, whereas later the C., H. & D. paid $42 per share and interest; also in the further fact that the stock was received and paid for on April 15, 1905, by H. B. Hollins & Company, then fiscal agents for both the C., H. & D. and the Pere Marquette. In order to raise the funds to make payment, that firm arranged with the North American Trust Company, the Trust Company of America, and the United States Mortgage & Trust Company, all of New York, for a loan of $500,000 from each for the Pere Marquette, $1,500,000 in all. The latter's 60-day 5½ per cent notes were given therefor, dated April 15, redeemable at an earlier date if desired by the borrower, and secured by the terminal company stock. These notes were not at that or any later time recorded on the books of the Pere Marquette. Up to this time there had been no corporate action by either road with respect to the purchase.

On April 27, 1905, the executive committee of the C., H. & D. met, directors Zimmerman, Cummings, Turnbull, and Wallace being present. A communication from vice president Russell Harding was read, wherein he recited certain conditions relating to the terminal company and announced his opinion that it would be decidedly to the advantage of both the C., H. & D. and Pere Marquette to acquire control of that road through stock purchase. Such are the official railroad minutes. Elsewhere in the record before us it appears that Harding was the beneficial owner of 300 shares of that stock, on which he received profits of $13,393.23 as a consequence of the purchase he advocated as the chief operating officer of the system. The executive committee authorized the purchase of the entire issue of stock, 35,000 shares, at $42 per share in cash and also directed that a communication be sent to the board of the Pere Marquette offering the said shares to that company at $47 per share in cash. The same communication contained the C., H. & D.'s offer, already referred to, to take not exceeding $4,000,000 of Pere Marquette refunding bonds at 90 and interest from time to time within the following six months. The board of the latter road voted its acceptance of these offers at a meeting on the same day. The two

roads then had interlocking directorates, representing the Hollins control.

Payment for the stock by the C., H. & D. was not made until June 21, 1905, probably awaiting the formation of the syndicate described at pages 138 to 140, for it was to this syndicate on that same day that the Hollins firm as fiscal agents of the C., H. & D. made a sale at 85½ and interest of $2,361,000 of the Pere Marquette refunding bonds, the proceeds from which were credited to the C., H. & D. On that day the latter's account with the fiscal agent was charged with the purchase price of the 35,000 shares of terminal company stock at 42 and with $15,354.18 of interest. This latter was evidently the interest on the $1,500,000 of the Pere Marquette notes to the trust companies, which as would be expected were also redeemed on that day.

Simultaneously with the recording of the purchase of the stock, the sale thereof at an advance of $5 per share was entered on the C., H. & D. books as a charge against its lessor company. Allowing for interest as before stated, the C., H. & D. profited in this transaction by $159,645.82, which ultimately, by a perversion of accounting principles, was disposed of as a credit to "cost of road."

To fully appreciate this transaction it must be borne in mind that the stock dealt in was worthless. Far from being a profit-earning investment, it was the stock of a company which was not even earning its fixed charges. As already shown in the complete terminal company story, Appendix 12, $3,000,000 of this stock was a pure bonus given with the bonds which were issued to pay for constructing the road, and the remaining $500,000 had been issued simply to legalize the issue of those bonds and had been misappropriated by those then and at the time of the sale of the stock still in control. Both the C., H. & D. and the Pere Marquette already had contracts granting them the unlimited use of all the facilities of the terminal company, and in making this purchase they simply added to their liability for that company's deficits. We direct attention to these details: That the sale was negotiated for the sellers by Thos. H. Tracy, general counsel and a director of both roads; that it was urged by Russell Harding, vice president of the C., H. & D., president of the Pere Marquette and also a director of both companies; that both Tracy and Harding had beneficial interests in the stock which was being sold; that another representative of the Toledo syndicate on the C., H. & D. board was James J. Robison, who directly, and also through membership in the firm of D. Robison, jr., & Sons Company, owned a substantial interest in the stock; and that the fiscal agents, in control of these two carriers, not only sanctioned these transactions but themselves received $85,000 in cash from the practically

insolvent roads through the deal. The record does not disclose who received the $42,000 in commissions paid by the Toledo-St. Louis syndicates.

These "fiscal agents," without themselves putting up one penny, borrowed $1,500,000 on the notes of the Pere Marquette, purchased worthless stocks at 41, sold the same immediately to the C., H. & D. at 42, which on the same day sold the same to the Pere Marquette at 47. The amount paid by the latter, $1,645,000, was entered as an "investment," was subsequently lost by reason of foreclosure of the terminal company bonds, and in 1908 was charged as a worthless asset to the Pere Marquette's "cost of road and equipment."

The coincidence in dates and occurrences evidenced in this record justifies the view that this purchase of the terminal company stock was an integral part of the Zimmerman-Hollins plan to develop their newly acquired Detroit, Toledo & Ironton Railway. Apparently the water front entrance necessary for that road in Toledo was most readily to be obtained from the terminal company, and it was in fact obtained from that source after the control was thus established.

11. *Attempted development of Detroit, Toledo & Ironton, at the expense of the C., H. & D.*—The five subjects next following outline this Zimmerman-Hollins plan. The Detroit, Toledo & Ironton was organized May 2, 1905, and was the successor of the Detroit Southern Railroad, sold at foreclosure the preceding day, after receivership beginning July 5, 1904. The Zimmerman-Hollins combination came into control of the Detroit, Toledo & Ironton and endeavored to develop it as a carrier of lake cargo coal. Using their control of the C., H. & D., they arranged to transfer that company's interest in dock properties at Toledo, which had been obtained from the terminal company, and its interest in a well-developed project to bridge the Ohio River between Ironton, Ohio, and Ashland, Ky., to the Detroit, Toledo & Ironton, and also arranged "reciprocal" trackage and terminal exchanges whereby the latter could use certain tracks and terminals of the C., H. & D. and of the terminal company, so as to establish the through route as contemplated, give the Detroit, Toledo & Ironton an entrance into Toledo, and dock facilities at that point. In the territory, particularly the terminal territory, which it served, and also in the traffic handled, the Detroit, Toledo & Ironton was a competitor of the C., H. & D. These arrangements were made so near the time of the Hollins sale of the C., H. & D. to the Erie, some of them indeed effected after the Erie had bought control, as to make it appear that they were made in contemplation of such a sale. As those in control must have known that the C., H. & D. was then practically insolvent there would seem to be no defense for their attempt to transfer such val-

uable properties and rights to a rival road, their control of which was entirely dissociated from the C., H. & D. We shall consider, first, the matter of the Ashland & Ironton Bridge Company because its history antedates that of the other subjects.

a. *Ashland & Ironton Bridge Company transactions.*—Ironton, Ohio, is on the Ohio River, opposite Ashland, Ky. The C., H. & D. did not reach Ironton over its own rails, but for years had had trackage rights from Deans, Ohio, to Ironton, 12 miles, over the Iron Railway. The rental at first was nominal, but from about 1900 it was increased from time to time until it became onerous. In September, 1902, the stockholders of the then Detroit Southern Railroad, afterwards reorganized as the Detroit, Toledo & Ironton, authorized the purchase of the Iron Railway and in June, 1903, opened up a through line between Detroit and Ironton, competitive with the C., H. & D.

Previous to this, in 1902, the officials of the C., H. & D. had become convinced that the coal fields of southeastern Ohio tapped by their line were approaching exhaustion. Without that traffic great difficulty would have been experienced in earning the interest on the bonds on that branch of the road, and the management set about to forestall such a misfortune. Definite plans were formulated to tap the coal fields of eastern Kentucky by building an independent connection from Gallia, Ohio, on the C., H. & D. into Ironton and a bridge across the Ohio to Ashland, Ky., where a connection with the Ashland Coal & Iron Railway was to be made, control of the latter and of the Northern Coal & Coke Company being included in the project. A connection with the Chesapeake & Ohio at Ashland was another important feature of the plan, the C., H. & D. management desiring to obtain the valuable strategic position which an independent entrance into and control of large coal-producing fields would give in dealing with the Chesapeake & Ohio for the latter's lake cargo coal. The ability to handle lake coal by this route rather than through the congested Cincinnati terminals was an additional advantage.

In furtherance of these plans a controlling interest was acquired by the C., H. & D. in the Ashland & Ironton Bridge Company, which had rights to build a bridge over the Ohio between Ironton and Ashland, Ky., surveys were made of the proposed line into Ironton, and right of way was purchased for that line and also for the approaches to and connection with the proposed bridge. Up to June 1, 1904, the C., H. & D. had invested $239,115.06 in the project, which also included the organization of the Toledo & Ohio River Railway Company to own the new extension in Ohio, and of the Ohio River Construction Company to construct the bridge. At a meeting on June 2, 1904, the executive committee of the C., H. & D. approved

the actions of and expenditures by the president in carrying out this project, which for several months had lain dormant on account of his serious illness.

No separation in the C., H. & D. accounts had been maintained between advances to the bridge company and advances to the new railway company; in fact, all these advances were carried in the form of notes of the latter under "bills receivable" and were so carried until June, 1907. However, in January, 1905, a study of the available records was made which in the following summer was revised and a separation of the costs established. This seems to have been in anticipation of the following corporate action:

The executive committee, directors Zimmerman, Turnbull, and Wallace being present, on June 30, 1905, authorized and empowered president Zimmerman to sell, at cost to the C., H. & D., its entire interest in the Ashland & Ironton Bridge Company, the Ohio River Construction Company, and the Toledo & Ohio River Railway Company. On the same day president Zimmerman, on behalf of the C., H. & D., made an agreement with one Samuel B. Lawrence whereby the latter was to purchase the entire outstanding capital stock and indebtedness of the three companies in the bridge project, the purchase price to be the cost thereof to the C., H. & D., estimated at $70,000, and to be paid by a construction company to be formed for the purpose of constructing a bridge across the Ohio River for the Ashland & Ironton Bridge Company. Lawrence, it may be noted, was president of the Michigan Securities Company. Subsequently, in August, 1905, that agreement seems to have been amended to exclude therefrom the capital stock and indebtedness of the Toledo & Ohio River Railway Company, for on October 10, 1905, president Zimmerman reported to the board that, pursuant to authority, he had sold the company's entire interest in the Ashland & Ironton Bridge Company and the Ohio River Construction Company, and received therefor a 2½-year 5 per cent note of the Kentucky Construction Company for $82,000, dated September 26, 1905, and an agreement of that company that it would construct a railway bridge at or near Ironton for the bridge company or its successors or assigns and begin construction within one year from June 30, 1905. The board ratified and confirmed these acts.

In arranging this sale the management appears to have overlooked the fact that by agreement dated April 6, 1905, the C., H. & D., as already recited herein, had sold sundry securities to the Michigan Securities Company, among which was the entire capital stock of the Ashland & Ironton Bridge Company. To remedy this situation the board at a special meeting on September 6, 1905, voted to amend the bill of sale so as to exclude these stocks therefrom.

As stated, the consideration for this sale was to be the cost to the C., H. & D., and this note given by the Kentucky Construction Company for $82,000 was intended to cover $75,644.61 of expenditures up to July 7, 1905, plus $6,000 previously paid for bridge company stock to complete ownership. The bridge was manifestly the key to the whole situation. Without a control of it the C., H. & D.'s investment of some $175,000 in the proposed connection with its own line must necessarily have been heavily discounted, if indeed not wholly lost. Certainly the value of the Ashland & Ironton Bridge Company's properties to the C., H. & D. was not to be measured solely by the amounts it had expended on that vital part of the entire project. It should be especially noted that while the executive committee originally authorized the sale of the entire bridge project, there were eventually sold only the vital parts, the bridge company, and the construction company which was to build the bridge. The third link, the projected line from Gallia to Ironton, was not necessary for Detroit, Toledo & Ironton purposes, for the latter road already reached Ironton over its own rails. It is also of significance that the board's ratification of this sale was at a special meeting called on October 10, 1905, those present being directors E. Zimmerman, Joseph B. Foraker, W. L. Dechant, Thomas H. Tracy, Russell Harding, Richard N. Young, and James J. Robison. Although the Erie management had indicated its decision nearly two months before to buy the C., H. & D. and the Erie board had formally authorized that purchase about three weeks before, Hollins still controlled the C., H. & D. board.

It may fairly be said that the transaction of sale was directed largely by personal interest of the Hollins management in the Detroit, Toledo & Ironton, if indeed it may not be characterized as utterly fraudulent. Director James N. Wallace, who first presented the project to the executive committee, testified herein that he had no recollection of the transaction but undoubtedly did whatever he did at Hollins's direction. It is also of record that when J. P. Morgan & Company took over the C., H. & D., demand was made on H. B. Hollins & Company for the return of these properties, and the demand was satisfied without contest.

During the late summer and fall of 1905 the construction work had been advanced by the new owners so that by February 23, 1906, when the properties were repurchased by J. P. Morgan & Company in the interest of the C., H. & D., the aggregate expenditures and interest charges amounted to a sum in excess of $206,000, the price at which it was repurchased. The construction of the bridge was then stopped and has never been resumed. In August, 1909, at the time of the readjustment of the C., H. & D. finances and its release from

receivership, that company paid to J. P. Morgan & Company $329,-824.70 in reimbursement for the advances made in the reacquisition and preservation of the properties in question. This amount, together with subsequent advances of $41,829.89 to the Ashland & Ironton Bridge Company and advances to the Toledo & Ohio River Railway Company accumulated since 1903, produce aggregate expenditures to June 30, 1914, of over $541,000. Far from being a source of revenue these properties for the year ending December 31, 1915, failed to earn expenses and taxes by $1,784.58, and therefore furnished no offset to the interest on the investment paid by the C., H. & D. in one form or another.

b. *Great Central Dock Company transactions.*—Another vital part of the plan of the Zimmerman-Hollins combination to develop their newly acquired Detroit, Toledo & Ironton at the expense of the C., H. & D., and one put through almost simultaneously with the Ashland & Ironton Bridge affair, was the transfer to the Detroit, Toledo & Ironton of the C., H. & D.'s investment in the Great Central Dock Company. The latter's physical property consisted of valuable dock and industrial properties on the east bank of the Maumee River in Toledo, Ohio. It seems to have been owned originally by the Robisons, who transferred it to the Toledo Riverside Railway Company in the course of the construction of the terminal company, payment being made in $150,000 of first mortgage 5 per cent bonds of the Riverside Company, issued under mortgage dated February 20, 1902, in which the Ohio Savings Bank & Trust Company, of Toledo, the Robisons' bank, was trustee. On that same date the stockholders and directors of the terminal company voted to accept the offer of the Riverside Company to transfer its entire capital stock, $150,000, to the former in consideration of the indorsement of its guaranty of principal and interest on the Riverside Company's $150,000 of bonds. On July 2, 1904, the Riverside Company formally conveyed all the property rights and franchises to the terminal company, which then acquired additional property and constructed a connection between its main line and its water front property on the Maumee River.

In May, 1905, the Great Central Dock Company was organized in the interest of the C., H. & D., and on the 23d of that month the board of the terminal company voted to sell to the new company the property rights and franchises theretofore conveyed by the Toledo Riverside Railway Company and the additional property and connecting branch just described. The preamble to the resolution states, "said property and railroad are no longer useful in the conduct of the business of this company." The consideration was to be such sum as the chairman of the terminal company board might determine, the Great Central Dock Company to assume the mortgage

and pay the $150,000 of bonds. On August 30, 1905, a deed of the property to the new owners was recorded.

This identical property, however, had been included in the mortgage dated July 1, 1904, given by the terminal company to the Commonwealth Trust Company, of St. Louis, as trustee, to secure $3,500,000 of terminal company bonds. The latter's corporate action in the matter necessarily included a resolution calling upon the trustee to release said property from the mortgage. This release was executed by the trustee on August 28, and there was deposited with it the sum of $10,000, certified to by E. Zimmerman, as chairman of the terminal company board, as the consideration determined upon by him under the authority of that board. He also certified that as further consideration the Great Central Dock Company had assumed and agreed to pay the $150,000 of the Riverside Company's bonds, saying also—

> In my opinion, this price is fair and represents the true value of the property.

Zimmerman was interested with Hollins in the Detroit, Toledo & Ironton. Here, again, there is significance in the dates, for the organization of the dock company and the transfer of this property to it immediately followed the acquisition of control of the terminal company by the Hollins firm through successive purchase of its stock by Hollins, the C., H. & D., and the Pere Marquette.

Seemingly there were few corporate acts by the C., H. & D. in connection with this transaction. There is mention of the dock company in the minutes of a board meeting on June 1, 1905, held at the office of H. B. Hollins & Company in New York, at which president Zimmerman was authorized to contract with the Great Central Dock Company for certain construction work on and improvement in its property at Toledo. It was specifically provided that the C., H. & D. in payment for expenditures thus incurred might receive bonds or stock of the dock company, and upon any bonds so received the C., H. & D. officers were authorized to indorse the guaranty of the C., H. & D. The fiscal agents were authorized to sell the bonds from time to time, at such price and on such terms as they might deem best. The record does not show anything further with respect to these particular matters.

However, at a directors' meeting on October 10, 1905, about three weeks after the Erie board had voted to purchase control of the C., H. & D., president Zimmerman stated that the Great Central Dock Company had provided for the repayment of the advances to it, whereupon the board authorized the company's treasurer to receive the same and issue a proper receipt therefor. The treasurer's cash sheets for the following day show the receipt of $10,000 plus interest described as being proceeds of sale of Great Central Dock Company

stock to M. L. Sternberger, who, the record would indicate, was an associate of Zimmerman. On October 26 the receipt of $4,250 plus interest from the same party is recorded as being on account of the incorporation fees and interest paid on the Riverside Company's bonds which the dock company had assumed. This aggregate of $14,250 covered all advances made up to that time by the C., H. & D., the $10,000 item being the sum paid by the latter to the terminal company as the purchase price of the property conveyed to the dock company.

The Morgan management soon ascertained that something was wrong on the Toledo river front. The new executive committee of the C., H. & D. on November 29, 1905, rescinded all the prior resolutions of the board and executive committee relative to the dock company and disclaimed and disaffirmed "all action taken by officers of this company intended or calculated to divest this company of its interest in the said dock company or of any of the property held by said company." When, subsequently, demand was made for the restitution of the C., H. & D.'s assets, they were forthcoming without contest. Settlement was made in August, 1906, for the payments by Sternberger, the voucher of the C., H. & D. reciting the following:

In repayment of the amount paid by H. B. Hollins & Company subsequent to December 4, 1905, in behalf of the Cincinnati, Hamilton & Dayton Railway Company, or its receiver, in connection with a recovery of the stock, assets, and control of the Great Central Dock Company (a subsidiary corporation of the C., H. & D. Ry. Co.) covering the following items originally paid (or assumed) by the C., H. & D. Ry. Co., subsequently repaid into its treasury by one M. L. Sternberger in October, 1905, pursuant to a plan to turn over the property of the dock company to others and later repaid by H. B. Hollins & Company as above stated.

c. *D., T. & I.–C., H. & D. trackage arrangements.*—The Detroit, Toledo & Ironton did not reach Toledo, Ohio, its line passing west and south of that city. The Zimmerman-Hollins combination caused the preparation, under date of July 1, 1905, of a contract which ostensibly provided for an *exchange* of trackage and terminal facilities between the two carriers then under their control, and further secured the adoption and execution of that contract by both carriers that same day. We need not attempt to measure in detail the advantages gained by each party to this contract. The document on its face shows a grant by the C., H. & D. of trackage rights over some 180 miles of its line, 70 miles of which was the section from Lima, Ohio, to Toledo, and the further grant of the use of all of its terminal facilities in Toledo and of those of the Pere Marquette in Detroit. These, it is quite obvious, gave to the Detroit, Toledo & Ironton much more than it could possibly return in its grant of rights over certain of its mileage and in its Ironton terminal.

In the light of the Ashland & Ironton Bridge and Great Central Dock transactions, and as a part thereof, it is inconceivable that it was intended that the C., H. & D. was to be the gainer by this trackage-terminal arrangement. It opened up its Toledo gateway to a rival road, a fact which of itself shows that the entire contract was merely a part of the general scheme. Presumably this was also the conclusion of the Erie management, for on November 29, 1905, the new executive committee rescinded the contract, and it was formally canceled on December 29, 1905. It is also of record that the final link in the chain had been forged for the Detroit, Toledo & Ironton in the form of a vote of approval on September 28, 1905, by the executive committee of the terminal company of a trackage contract whereby the use of the latter's facilities was granted. This not only gave further important connections in Toledo with other lines but passenger facilities as well, and in addition closed the gap between the Great Central Dock and the connection between the terminal company and the C., H. & D. reached under the contract with the latter. This arrangement was also made possible by the Hollins control of the principals concerned.

d. *Diversion of traffic to Detroit, Toledo & Ironton.*—On July 12, 1905, the following telegram was received by president Zimmerman of the C., H. & D. from a member of the Hollins firm:

It is essential that for July and first two weeks of August you help Detroit, Toledo & Ironton with shipments from Superior. Answer about how many cars you can give them. There are special reasons which I can not telegraph which make it to the interest of the Cincinnati, Hamilton & Dayton that this help should be given to the Detroit, Toledo & Ironton.

The president of the C., H. & D. proceeded promptly and on the following day was able to advise that the Superior Coal Company would increase its shipments via the Detroit, Toledo & Ironton and that he had secured for that road one-half of the shipments of the Wellston Iron & Steel Company. One paragraph of his letter of advice reads as follows:

I am also trying to arrange to control the entire business of the Wellston Iron & Steel Company for the C., H. & D. and D., T. & I., which would amount to about 450,000 tons a year in and out, and I am in hopes of more than doubling the business for the D., T. & I. in that section of the country, and the C., H. & D. will not lose any business.

e. *Detroit, Toledo & Ironton expansion project in general.*—A defense of these transactions on the ground that they were all family line affairs can not be admitted. The record shows that as early as the autumn of 1904 the Hollins firm had endeavored to negotiate a sale of C., H. & D. control to J. P. Morgan & Company. Many of the transactions under review were consummated after the sale of C., H. & D. control to the Erie had been arranged. And

finally it is apparent that the Hollins management knew that the C., H. & D. had been practically insolvent for many months prior to that sale. Evidently it was not intended to establish a community of interest as between the C., H. & D. and the Detroit, Toledo & Ironton. The inevitable conclusion on the record before us is that there was a deliberate plan to pluck the C., H. & D. for the benefit of the Detroit, Toledo & Ironton. The subsequent proceedings by the new management, as later described, might well have been carried beyond the mere exaction of restitution.

12. *Falsification of accounts during Zimmerman-Hollins control.*—The following statement presents a condensed income account covering the year ended June 30, 1905, for the C., H. & D., including its proprietary line, the Cincinnati, Indianapolis & Western, 1,038.24 miles operated, as recorded in the carrier's books of account:

Gross earnings from operation	$8,008,917.65	
Operating expenses	6,095,885.11	
Income from operation		$1,913,032.54
Taxes		316,061.12
Net income from operation		1,596,971.42
Income from other sources		59,688.65
Gross income		1,656,660.07
Deductions from gross income:		
Rents paid for lease of road	517,288.35	
Miscellaneous rents	372,273.11	
Interest accrued on funded debt	1,009,515.63	
Other deductions	348.52	
Total deduction from income		1,899,425.61
Net deficit		242,765.54

The 4 per cent preferred stock bore guaranteed dividends which makes the accrual of the dividend more in the nature of a fixed charge than a division of profits. If these dividends are so considered, the net deficit for the year was $251,969.20.

The foregoing income account bore little resemblance to the truth. The fact is that large sums properly chargeable to the income for 1905 were ordered to be charged to various other accounts and were so charged in a way to conceal the true state of the company's affairs. These entries violated commonly accepted accounting principles in such a flagrant manner as to make it evident that the purpose was to deliberately falsify the accounts in an effort to avoid showing the utter failure of the company to earn anywhere near its fixed charges.

The charges against the income of that year thus willfully omitted included interest on loans made to retire preferred stocks; interest

on bonds issued in part payment for Pere Marquette stock; overcharge claims, etc., settled in 1905 and properly chargeable against revenues for that year; certain items of operating expenses; lease rentals; trackage rentals; fees to fiscal agents; special legal fees, etc. Such items for the year under review aggregated $843,361.95, thus showing that the road fell at least $1,095,331.15 short of earning its fixed charges. An aggregate of $111,810 was charged to income during the year as representing dividends on the 5 per cent preferred stock, thereby making the gross deficit to be carried to profit and loss, $1,207,141.15. The operating expenses, to the omission of which reference has been made, constituted certain elements of cost in additions and betterment work. These, under the carrier's own accounting rules, should have been charged as maintenance, but were included in investment account. Later these items were included in the total cost of these improvements, as certified to the trustee, and bonds to the amount of $462,000 were allowed to issue against that total cost.

But what the Zimmerman-Hollins management accomplished along that line was little compared with what it attempted.

The refunding mortgage of the C., H. & D., dated July 1, 1904, provided for the reserve of $1,477,000 in par value of that series of bonds for capital expenditures. In January, 1905, the Zimmerman-Hollins management directed the preparation of a statement calculated to satisfy the conditions of the mortgage restricting the issuance of these bonds to the purpose stated. Vice president Harding's report on the matter to president Zimmerman stated:

> I have, on behalf of this company, purchased and contracted to purchase, acquire, and construct the property, additions, betterments, and improvements of, and upon the lines of railroad of this company, and for rolling stock and equipment, as follows:

The statement which followed contained items aggregating exactly $1,477,000. This report, however, did not satisfy the trustee under the mortgage. The result was the preparation of a new form of certification by counsel for the trustee, and this was of such a nature that a new statement of "betterments" made some months later covered expenditures which aggregated only $462,272.71, against which the trustee allowed $462,000 of bonds to issue, as stated above.

13. *Wind-up of affairs of C., H. & D. common-stock syndicate.*—We have earlier shown how the promoters finally succeeded in securing funds to make the payments on July 7, 1904, needed to secure control of the C., H. & D., and the formal action of their reorganized C., H. & D. board. As stated a 30 per cent call on the syndicate subscribers had brought in $2,437,500; advance payments of $617,500 were made

by the Commonwealth Trust Company and the terminal company on their subscriptions; $1,000,000 was realized from the sale of preferred stock; and the balance had been borrowed in two amounts, $2,500,000 and $175,000, a total of $6,730,000. At the same time the managers borrowed $100,000 for syndicate expenses from which they immediately voted themselves fees of $10,000 apiece. In accord with the terms of the vendors' agreement of May 28, 1904, the unpaid balance on the stock, $2,512,500, was covered by a 4 per cent one-year note. On October 10, 1904, after a 15 per cent call had been collected from the subscribers, not from Hollins & Company, a payment of $927,535.48 was made to the vendors on the principal of that note plus $26,520.83 of interest to date.

Also in the fall of 1904 the syndicate stock was deposited with the United States Mortgage & Trust Company as "depositary" under a voting trust agreement dated October 19, 1904, between that company; a "committee" composed of George W. Young, Eugene Zimmerman, Walter G. Oakman, Rafael R. Govin, George H. Norman, Frederick H. Prince, and Mark T. Cox; and the "depositors" of stock under the agreement. The first four members of the committee had been appointed by the syndicate managers and the last three by the Pere Marquette stockholders who had subscribed to the agreement with F. H. Prince & Company under which the Pere Marquette stock sold to the C., H. & D. had been assembled. One of the provisions of the voting trust agreement was that other C., H. & D. stockholders, either of common or preferred stock, might be admitted to participation thereunder.

To meet at maturity the balance due on the $2,512,500 syndicate note, before described, a 6 per cent call loan of $1,584,964.52 was negotiated from the Trust Company of America on July 6, 1905. It is worth noticing that at this time both Henry F. Shoemaker and H. B. Hollins were directors of that institution.

The total received by the trustee for the vendors was $9,298,262.25, including $73,068.14 of interest on notes and $176.11 of interest on deposits, which, except for $30,000 disbursed for trustee fees and other expenses, was paid to the following:

Henry F. Shoemaker	$3, 549, 203. 82
J. P. Morgan & Co	2, 547, 773. 79
Eugene Zimmerman	1, 737, 475. 93
M. D. Woodford	978, 575. 23
Speyer & Co	232, 974. 48
Rush Taggart	215, 251. 52
Edith Grant	3, 503. 74
Noah H. Swayne	3, 508. 74
Total	9, 268,262. 25

The distribution was made in three payments. Several changes in the holdings of interest occurred between the first and second payments as shown below:

	At first payment.		At second and third payments.	
	Common.	Preferred.	Common.	Preferred.
Henry F. Shoemaker	22,793	6,400	22,209	6,400
J. P. Morgan & Co.	20,286		20,286	
Eugene Zimmerman	11,616	2,400	12,000	2,400
M. D. Woodford	7,000	900	7,000	900
Speyer & Co.	1,855		1,855	
Rush Taggart	1,450	300	1,450	300
Edith Grant			100	
Noah H. Swayne			100	
Total	65,000	10,000	65,000	10,000

Coming now to the accounts of the syndicate, it appears that the $2,500,000 loan matured on July 6, 1905, and was renewed by the United States Mortgage & Trust Company on a 6 per cent basis without commission. The participants in this renewal are shown in Appendix 11. The $1,584,964.52 note was paid the Trust Company of America on September 26, 1905, together with $21,661.18 of interest thereon, making the total cost to the syndicate of the 65,000 shares of common and 10,000 shares of preferred, $9,225,000 of principal and $94,747.32 of interest, or $9,319,747.32 in all. The records of the United States Mortgage & Trust Company with which these funds were deposited do not disclose the purposes for which certain other disbursements were made by the syndicate, and it has not been possible to ascertain the facts from other sources. It is known that a loss of $100,000 was suffered in the sale of the preferred stock, and the record also shows that interest and commissions on loans amounted to over $300,000. With fees to the syndicate managers, counsel fees, and other items, the expenses of the syndicate probably ran well
,00,000.

idering the matter of syndicate expenses mention should be
ertain items paid by the C., H. & D. to the United States
& Trust Company in October, 1904, for alleged services
as follows:

: Cincinnati, Hamilton & Dayton Co., preferred stock,
):

nd transfer trust receipts $500

: Toledo Railway & Terminal bonds, $3,500,000:

nd transfer trust receipts 1,000

: Pere Marquette stock, $11,000,000:

and transfer refunding bonds and collateral trust notes,
. & D. 2,500

: Subscription to syndicate for purchase of stock of C., H.

nd subscription certificates 1,000

These items with others aggregated $20,000, and concerning them a witness representing the trust company said:

Well, I should say that some of those services were for the syndicate.

From the available records it has not been possible to determine the number of shares the beneficial interest in which was actually owned by H. B. Hollins & Company, but in winding up the syndicate large sums were paid in by that firm to liquidate the unpaid balance of principal and expenses due on the subscriptions controlled by them. The number of shares represented thereby, however, can not be fixed. The syndicate accounts with the United States Mortgage & Trust Company were closed on November 1, 1905.

Between September 12 and October 20, 1905, J. P. Morgan & Company, as recited in detail under the following subject, paid $11,-218,000.37 to the Hollins firm, understood to represent 72,456 shares, of which 56,000 were bought for $160 per share and the balance at $135 per share, though this leaves some $36,000 unaccounted for. On account of the difficulties mentioned, and also because of the fact that Hollins & Company shared their profits with certain of the syndicate subscribers, it is not possible from this record to compute that firm's profits in this transaction, even approximately. That they were substantial, however, is evident. It is equally evident that the syndicate's obligations were paid and its profits distributed in the wind-up from the funds furnished through Morgan & Company, Hollins & Company here, as always, advancing nothing.

V. PURCHASE OF C., H. & D. CONTROL BY THE ERIE, AND RESCISSION THEREOF, 1905.

The acquisition of the C., H. & D. by the Erie was not a new subject in the minds of Erie officials and directors. It had been seriously considered at different times for several years prior to the actual purchase. The value of the C., H. & D. to the Erie from a traffic standpoint had been investigated and favorably reported, the southern connections through Cincinnati and western connections through Indianapolis being looked upon as of particular value. The section from Lima to Toledo, Ohio, was not considered as of major importance. In these researches, which apparently ceased early in 1904, the Pere Marquette was not considered at all.

According to the testimony of president Underwood of the Erie there were no negotiations carried on for this purchase by him or by anyone else on behalf of the Erie prior to an interview he had with J. P. Morgan at the latter's request on August 16, 1905, at which Morgan said:

When I was more active in the Erie than now, and during Mr. Coster's time, it was always thought that some time the C., H. & D. would become the property of the Erie. Now I have to say to you if that is still the intention of the Erie

board, and it is desirable on the part of the Erie company to acquire the C., H. & D., they will have to move quickly in the matter, for it is to be sold soon and there are other purchasers after it.

He then submitted a statement showing the condition of the C., H. & D., which was taken under advisement by president Underwood and his official staff, not the directors, and they decided that it was desirable to acquire the property. The president personally notified Morgan of that decision and, confirming this decision, on August 17 addressed a letter to Morgan in which he stated that the Erie had been furnished plans for grade reductions, etc., on its own line, which upon completion would enable the road to handle more traffic than was then tributary to it. He pointed out that it was the duty of the management to secure additional traffic on as favorable terms as possible, that the properties proposed to be acquired would largely increase Erie traffic, and that those properties were "worth more to the Erie than to any other interest on the map, and while the price is high there is no probability that it will ever be less." He predicted that in five years' time the increase in revenues from the haul of anthracite coal on the Erie and the sales thereof in the territory traversed by these lines and through their connections across Lake Michigan to the northwest would in itself go a long way toward paying the interest on the proposed investment. The concluding paragraphs of this letter are of such interest, in the light of subsequent developments, as to warrant reproduction here:

It seems to me that the matter will go by default if you do not take a strong hand, and I earnestly hope that you can see your way clear to make the purchase. If it be impossible at this moment to vest its ownership in the Erie, I trust that can be accomplished later.

In conclusion: I have seen no favorable geographical or traffic movements made toward the Erie by its competitors. The things that have been done in the interest of the Erie have been done by J. P. Morgan & Company, and it is to them that I feel we must look for such assistance as we are to have. I have written earnestly because I have a deep conviction that the proposed move is the move to make; the error is that it was not done before.

Up to this time, in fact up to October 20, 1905, the C., H. & D. annual report for the preceding fiscal year, ended June 30, had not been published. There was available, of course, the report of the Erie's traffic officials above referred to, which covered earlier years, including that ended June 30, 1903. This report was made by H. B. Chamberlain, third vice president and general traffic manager, and is dated May 23, 1904. It contains a general description of the property and traffic of the C., H. & D. and constituent lines, and a statement of its capitalization, earnings, etc. It is to be noted, however, that *only* the C., H. & D. was covered, and that the latest operating figures were for the year ending June 30, 1903. At this time, in

1905, it was not the C., H. & D. alone that the Erie undertook to purchase, but the C., H. & D., the Pere Marquette, the Chicago, Cincinnati & Louisville, and the terminal company, together with all accompanying obligations incurred by the new management as hereinbefore described. As to the Erie's investigation of the condition of affairs in 1905, president Underwood testified as follows:

Q. Was there no attempt made prior to the Erie taking upon itself the obligation to issue about $12,000,000 of securities to secure control of this road, to ascertain its actual financial and physical condition, except the perusal of a statement such as you have described?

A. That, I think, was all the research we would make. That would ordinarily be sufficient, if we had confidence in the man who presented the statement, and I certainly had the fullest confidence in Mr. Morgan's statement. I would have taken his word for it without a figure.

In answer to a question as to whether a statement of the C., H. & D.'s financial condition had been furnished J. P. Morgan & Company, the voluntary witness for that firm produced the statement contained herein as Appendix 15. He testified that he had found it among the firm's files on this subject, and that one of the partners told him it had been furnished the firm by H. B. Hollins & Company at the time of the purchase, and had been accepted as reflecting the true condition of the properties without any investigation whatever by either the Erie or the Morgan firm as to its accuracy or as to the true conditions then obtaining. The reliance placed on this document warrants a fuller consideration of it than would otherwise be accorded. It is undated and carries no indication of the period covered by the operating figures therein contained or of the office or party responsible for its preparation. The figures of operation cover the C., H. & D. and Pere Marquette only; the gross earnings are *estimated;* and the expenses are computed on a basis, also estimated, of 65 per cent of the estimated earnings of the C., H. & D., and 70 per cent of the Pere Marquette. According to these figures the net remaining after the payment of fixed charges would have been $692,663, which, if contingent interest charges of $499,620 were allowed for, would be reduced to the narrow margin of only $193,043 as the net from 3,400 miles of line. The statement contained no information to show whether the results of operation on the Chicago, Cincinnati & Louisville and the terminal company would make the so-called "contingent" interest charges actual or not.

Further, in connection with this financial statement on which such great reliance was placed, we must refer to an exchange of correspondence which occurred between August 15 and 24, 1905, concerning a certain statement then being prepared at the direction of the Hollins firm by president Zimmerman, and one copy of which eventu-

ally went to that firm and another to George W. Young. This statement is described in the correspondence as one showing "capitalization, fixed charges, estimated earnings, etc., of the C., H. & D. and P. M.," the figures for the Chicago, Cincinnati & Louisville to be omitted, and this description fits well the document placed in this record on behalf of J. P. Morgan & Company. It was prepared in and forwarded from Cincinnati by N. B. Hersloff, an employee of Hollins & Company, but evidently did not show as favorable results as were desired, for on August 24 the firm wired Zimmerman as follows:

Better not have Young show statement you sent him; estimate earnings too poor; telegraph him in two separate telegrams, one not use statement sent him as you have another corrected one, and another telegram saying have not mailed statement because will bring on figures with me early next week.

President Underwood's remarks before the Erie board when he urged the purchase indicate that he had further knowledge of the situation than this statement revealed. As already said the latter showed a surplus from the operations of the properties, whereas president Underwood then spoke of the C., H. & D. system as only earning its fixed charges. This is indicated by the following excerpt from the minutes of the Erie board meeting:

He (Mr. Underwood) recognized that the Cincinnati, Hamilton & Dayton system now is paying only its fixed charges, so that for the time being the purchase would involve an apparent annual loss of $500,000, but this loss would in the future disappear, and in the meantime the collateral advantages derived from the purchase would more than compensate for any proportion of the aforesaid loss.

Besides this the record shows that the Erie management was aware as early as the late summer of 1904 that the C., H. & D. had formed an entangling alliance, so far as the Erie was concerned, with the Pere Marquette, making the purchase undesirable. This dovetails into the testimony of George M. Cumming in the *Bradford Case*, *supra*, to the effect that in the autumn of 1904 negotiations were pending between Hollins & Company and J. P. Morgan & Company respecting a sale of the C., H. & D., and that he himself called on Charles Steele and Norman B. Ream, Erie directors, once or twice to give them information about that road and the Pere Marquette with a view to inducing the Morgan firm to buy the C., H. & D. stock. Charles Steele, in addition to being an Erie director, was a partner of J. P. Morgan & Company.

It must be remembered also that in 1901 J. P. Morgan & Company acquired 23,589 shares of C., H. & D. common and while 20,286 shares were sold to the syndicate in May, 1904, the last payment therefor was not made until July, 1905, and in addition the Morgan

firm held at least 1,608 shares at the time of the Erie purchase. During this period the firm had taken no part in the management of the property but with an investment of this magnitude it seems unlikely that it had lost all interest in and was ignorant of the financial conditions of the two properties. Furthermore it was directly in its line of business to know that the C., H. & D. had alone put out new funded obligations during the preceding year amounting to $26,170,000 in par thereby adding $1,136,400 annually to the fixed charges of that road, without considering at all the additional burdens on account of rental for the Pere Marquette and the joint liabilities of the two roads on account of the Chicago, Cincinnati & Louisville and the terminal company. It is also altogether unlikely that the Erie was ignorant of these increases in the capitalization of the C., H. & D. and of the consequent inability of that road to earn its fixed charges. In fact practically all the salient facts as to obligations issued and assumed had been published in financial papers some time before.

But it is unnecessary to gather up the straws which indicate that Morgan & Company and the Erie management knew what was commonly known in the world of railroad finance. The record shows clearly that a director of the Erie had been informed in detail of the critical financial condition of the C., H. & D.-Pere Marquette system some weeks before president Underwood's interview with J. P. Morgan, and further that this director communicated this information immediately to a member of the Morgan firm. To appreciate the force of these circumstances it is necessary to relate certain happenings leading up to them.

Newman Erb, formerly a lawyer and for many years a well-known figure in railroad finance in New York City and a practical railroad operating man, was a member of the Pere Marquette syndicate and very active in the formation of the C., H. & D. common-stock syndicate. He personally secured many of the larger subscriptions, was himself a subscriber, and in addition was one of the guarantors of notes of the syndicate for $275,000. It seems to have been the understanding that he was to have representation on the reorganized C., H. & D. board but when the syndicate assumed control on July 7, 1904, he found that he had been "frozen out." This he attributed to the stand he had taken when the price was being fixed by him and the other promoters for the Pere Marquette stock, he insisting that only $75 of that price should be placed on the C., H. & D. as a fixed interest-bearing obligation.

Soon afterwards, when the proposal came up to retire the preferred stock, he protested vigorously and threatened to enjoin such action. These protests culminated in his being practically bought out by

those opposed to his views, and he went abroad, returning in the spring of 1905. He found on his return that the system had become seriously involved financially, whereupon he wrote a letter dated July 3, 1905, to the managers of the C., H. & D. common-stock syndicate, protesting against the financial manipulations which had occurred and demanding that a call on the syndicate subscribers be made to pay off at least the $275,000 of notes on which he was one of the guarantors. In this letter he outlined the increases in fixed charges and accompanied it by a statement showing the obligations which occasioned such increases. No action being taken, he sent a second letter of protest to the syndicate managers, dated July 24. The outcome of this, so far as the syndicate was concerned, will be discussed later, the significant point now to be considered being that Newman Erb, having heard of the contemplated purchase by the Erie, arranged, by a letter dated July 25, 1905, for an interview with H. McK. Twombly, an Erie director and one who, as will be shown later, favored the purchase and "from his personal knowledge of the efforts of Messrs. J. P. Morgan & Company and of the difficulties overcome by them in obtaining the property" considered a commission of 3½ per cent to that firm quite reasonable and proper. This interview was had a few days later than the date of the letter, and from it Erb learned that while nothing definite had yet been done the Erie had been considering the purchase of the C., H. & D. system. He explained the conditions to Twombly and gave him copies of his letters of protest with the statement of increases in obligations. Twombly asked permission to show the papers to Charles Steele, a member of the firm of J. P. Morgan & Company, and upon receiving such permission he immediately arranged by telephone for an interview for that purpose, Erb accompanying him to the door of the Morgan office. The papers were ultimately returned to Erb without comment. They are now lodged in the files of the Pere Marquette and bear the notation in Erb's handwriting to the effect that they had been shown to Twombly with permission to show Steele.

In the face of all these circumstances it becomes necessary to look beyond the Morgan-Erie explanation of the reason for the purchase by the latter of the C., H. & D. It is to be found, in our opinion, in what was hinted at by a representative of the Morgan firm and bluntly acknowledged by president Underwood in testifying with regard to the effect produced by the rumor that the C., H. & D. was in danger of falling into other hands. Mr. Underwood said:

It had an effect on me. I did not at that time want to see the C., H. & D. get into the hands of any interest that would divert its traffic from the Erie Railroad, and that was one of the prime factors that made us move when we did.

This fear that the C., H. & D. was about to fall into hostile hands was occasioned by the formation of a new syndicate by Newman Erb and others to take over those properties. It will be remembered that one of the conditions which H. B. Hollins & Company exacted before they would undertake the retirement of the C., H. & D. 5 per cent preferred stock was that the subscribers to the C., H. & D. common-stock syndicate should, among other things, give Hollins & Company an option till December 15, 1904, to purchase such subscription interests at a price equivalent to net cost to the subscribers plus 5 per cent interest, Hollins after such purchase to assume the individual subscriber's liability under the syndicate agreement. The Hollins firm thus really secured control of the C., H. & D. and allied properties without directly investing a dollar. This surrender of control without the investment of any capital was one of the matters to which Erb had objected most vigorously in connection with his opposition to the retirement of the preferred stock. These options were not exercised, but Hollins & Company otherwise purchased more than a majority of the subscription interests and became liable for all installments thereon called by the managers under the original syndicate agreement.

Erb's action in the summer of 1905, following his discovery of the bankrupt condition of these properties, has just been recited. In addition he found that the Hollins firm had failed to retire the $275,000 of demand notes as agreed, this, by the way, being the only cash expenditure they were expected to make when they were granted control. As an indorser on these notes, and being convinced of Hollins & Company's inability to carry out their undertakings, Erb, on July 5, 1905, demanded of the United States Mortgage & Trust Company, the holder of said notes, that it call the same immediately. To obtain funds to pay the notes the managers would be obliged to issue a call on the syndicate subscribers, forcing Hollins & Company to pay such call on the subscriptions taken over by them or default. In anticipation of such default and the return of the properties in their crippled condition to the old subscribers, Erb undertook the formation of a new syndicate to take over the 65,000 shares of C., H. & D. common. Sufficient subscriptions were obtained to make up the amount needed, and, while no formal agreement was executed, the matter was considered settled, and attorneys set to work to prepare the necessary papers. The subscribers as named in the documents accumulated by Erb on the subject were: Edwin Hawley, D. G. Reid, George W. Young, Newman Erb, John W. Gates, C. D. Simpson, —— Elwood, Harry S. Black, —— Hubbard, T. P. Shonts, Paul Morton, E. H. Huntington, —— Ray, —— Lambert, —— Watson, —— Warren, —— Kleybolte, F. H. Prince, W. A. Bradford, jr., W. L. Bull, and J. S. Bache & Co.

On July 20, 1905, the United States Mortgage & Trust Company notified the syndicate managers that payment of the $275,000 of notes was desired by August 21. Payment was not made on that date, and Erb and the other indorsers were called upon to make good their guaranties. A few days later, August 24, the syndicate managers issued a call for a 10 per cent installment on the subscriptions, payable by September 25, 1905.

Erb's new syndicate was completed early in September and made an offer, for the C., H. & D. stock, of $125 per share plus interest and expenses, equivalent to about $140 per share. It had become generally understood that the Hollins firm would be unable to carry out its purchase contracts, and the managers' call for 10 per cent on the subscriptions had precipitated matters. Negotiations finally reached a point where a decision was demanded and Hollins & Company asked for one more day. The following morning they announced the sale to J. P. Morgan & Company.

What had happened in the 24 hours meanwhile was that J. P. Morgan and H. B. Hollins had met at the former's New York residence on September 9, 1905, and closed an agreement for the purchase by Morgan of Hollins's C., H. & D. stock holdings, involving an expenditure of some $12,000,000. Francis Lynde Stetson was present as Morgan's counsel and wrote the agreement on a sheet of note paper. Its text follows and its significance will be further considered.

9 Sept. 1905.

219 MADISON AVENUE

H. B. Hollins & Co. will sell and J. P. Morgan & Co. will purchase 56,000 shares of C. H. & D. R. R. Co. Common Stock at the price of 160% with interest at the rate of 4½% per annum from December 7th, 1905, until date of delivery, all dividends to be credited against the interest and to J. P. Morgan & Co.

This delivery may be made by H. B. Hollins & Co. at any time, and must be made by them upon October 1st 1906, or at such time thereafter as shall be specified by J. P. Morgan & Co. by three months' notice in writing.

If so requested by H. B. Hollins & Co., J. P. Morgan & Co. will lend to them upon their obligations secured by C. H. & D. stock or syndicate subscriptions at 185% such sums as they may find necessary to carry such stock or subscriptions, to an aggregate amount not exceeding 56,000 shares, the rate of interest to be 4½%.

This contract and all obligations of J. P. Morgan & Co. may be terminated by them at any time after October 1, 1906x, by three months' notice in writing by J. P. Morgan & Co.

J. P. MORGAN & Co.
H. B. HOLLINS & Co.

x1906
H.B.H.
J.P.M.

*In addition we gave H. B. H. & Co. order to buy about 16,000 sh. participation ctfs. at about 185.

J. P. M.

*Pencil memorandum at bottom.

In working up this new syndicate it seems that all concerned were informed as to the true financial condition of the properties, so that it would appear to have been a difficult matter to induce subscribers to embark in the new venture. Even though certain of the obligations were recapitalized so as to reduce the fixed charges to the level of the earnings, as seems to have been proposed, the proposition would still seem to have been too uncertain to attract such substantial subscriptions as were needed. It may well be that the following sentence from Erb's letter of September 20, 1905, addressed to one of the original subscribing interests of May 19, 1904, suggests one, if not the underlying, purpose of this syndicate:

> Messrs. Edwin Hawley and John W. Gates were unimportant participants in this syndicate and their names were made use of, with J. Pierpont Morgan & Company, to create the impression that the property would go into speculative hands, and they have since stepped forward to take the property from Messrs. H. B. Hollins & Company, thus relieving the entire situation and to the satisfaction certainly of everybody in interest.

Whatever motive lay beneath the new syndicate scheme, there is no doubt as to the effect it had on the Erie management.

To continue now with the Morgan-Erie purchase it is significant that more than a month before any action whatever was taken in the matter by the Erie board or stockholders, president Underwood and his staff had decided to make the purchase, had announced that decision to J. P. Morgan, and had confirmed it by letter, as before stated. Furthermore, 11 days before the first action by the board, Morgan & Company had entered into the before-mentioned contract with H. B. Hollins & Company to purchase the stock and before that first meeting of the board had made two payments thereon aggregating some $386,000. This contract of September 9, 1905, provided for the purchase from the Hollins firm by Morgan & Company of 56,000 shares of C., H. & D. common stock at 160 with interest at 4½ per cent per annum from December 7, 1905, to date of delivery. It will be remembered that all of the C., H. & D. common stock represented water poured into the capitalization in the 1895 consolidation. Provisions were made for loans from Morgan & Company to the Hollins firm secured by the C., H. & D. stock at 135, and the contract was terminable by the buyer at any time after October 1, 1906, upon three months' written notice. A penciled notation thereon indicates that orders were also given the seller to acquire in addition about 16,000 shares represented by participation certificates at about 135. As indicated later, the Morgan firm acquired over 74,000 shares, although a much smaller number of shares would have secured control. The reason for acquiring such a large majority is not stated of record, but it is pertinent to note that in May, 1904, the Morgans had disposed of 20,286 out of 23,589 shares then owned by

them, leaving 3,303 shares in their hands. In the final trading the record shows that they sold 1,603 shares to the Erie at 135. Who else outside of the common-stock syndicate was also favored by being included in the sale to the Erie does not appear of record.

Finally, on September 20, 1905, a special meeting of the Erie board was called, at which there were present president Underwood and the following directors: Geo. F. Baker, J. J. Goodwin, Wm. C. Lane, J. G. McCullough, D. O. Mills, H. McK. Twombly, A. E. Orr, Norman B. Ream, L. L. Stanton, Francis Lynde Stetson, and Charles Steele. It must be remembered that the trade had already been made. This meeting, to use president Underwood's own language, was to "legitimatize" the transaction by the formal vote of the company's governing power. Necessarily, in view of the fact that the stamp of finality had already been put on the purchase, this meeting was purely perfunctory, and it is therefore of considerable interest to note to what lengths the several directors went in an effort to make of record plausible reasons in support of their votes to purchase the C., H. & D. We give here the substance of the minutes of that meeting.

Director Steele, a member of the Morgan firm, made an extended statement concerning the C., H. & D. system, including the Pere Marquette, and concerning also negotiations had with and through his firm to obtain control of that system for the Erie. These negotiations had been undertaken at the instance and request of the president and various directors of the Erie and as a result his firm had undertaken to acquire from H. B. Hollins & Company some 74,000 shares at approximately $160 per share. He also stated that his firm was willing to turn over the 1,603 shares owned by it at $135 per share and to accept as commission in the transaction 3½ per cent of the cost of the stock purchased from Hollins & Company or such lesser amount as the board should deem proper, "it being the wish of Messrs. J. P. Morgan & Company that the transaction should be disposed of by the board to its own satisfaction." Mr. Steele then withdrew from the meeting and took no further part in the proceedings.

Thereupon president Underwood made an extended statement to the board earnestly recommending the acquisition of this system as of very important value to the Erie and as necessary to its development. He stated that he recognized that the C., H. & D. system was *then* paying only its fixed charges, so that for the time being the purchase would involve an apparent annual loss of $500,000, but expressed the belief that this loss would disappear in the future, and that meanwhile "the collateral advantages derived from the purchase would more than compensate for any proportion of the aforesaid loss."

The recommendation was then discussed. Governor McCullough supported the president's statement "especially in the light of his experience in the early eighties when the Erie had very close relations with the Cincinnati, Hamilton & Dayton Railroad Company." Director Ream recommended the purchase seemingly on the ground that "if the Erie Railroad did not extend its system it might be considered that the company would soon have reached the limit of its growth." Mr. Twombly favored the purchase, and from his personal knowledge of the efforts of J. P. Morgan & Company and of the difficulties overcome by them in obtaining the property, thought that the compensation suggested by Mr. Steele was quite reasonable and proper.

It was then unanimously voted to authorize the president to contract with J. P. Morgan & Company to purchase approximately 74,000 shares of C., H. & D. common stock at the cost thereof to that firm (not exceeding $160 per share) plus a commission of 3½ per cent of such cost, except that $135 per share without commission was to be paid for 1,603 shares long since acquired by Morgan & Company. To provide funds for this purchase it was voted to issue $12,000,000 of the Erie Railroad Company's 4 per cent convertible gold bonds secured by its general mortgage dated April 1, 1903, convertible at par into common stock, at the rate of $60 per share any time after 2 and before 12 years from October 1, 1905. The Erie stockholders were to be granted the privilege ratably to subscribe for said bonds at par and accrued interest, payable in cash. The company's officers were authorized to enter into a contract with J. P. Morgan & Company, as managers of an underwriting syndicate, whereby the syndicate should be bound to take any and all of said bonds not taken by the stockholders and on account of such undertaking should be entitled to a commission of 2½ per cent on the entire issue of $12,000,000.

The stockholders ratified these acts on October 10, in which meeting Messrs. Steele and Ream declined to act as proxies, "because of their being interested in the transaction." It will be recalled that Mr. Ream urged and voted for the purchase in the directors' meeting on September 20, 1905.

The formal contract made by the Erie with J. P. Morgan & Company was dated September 27, 1905, and embodied the terms voted by the board. Morgan & Company's obligations to purchase C., H. & D. stock thereunder are stated to be "in behalf of the Erie Company." The purchase was actually consummated on October 20, on which date the Erie issued its 6 per cent notes due November 29, 1905, for an aggregate amount of $11,835,786.24, including $392,630.48 of commission to Morgan & Company, for 74,059 shares. These shares were deposited as collateral for the notes, which were drawn to the order of the following:

$3,000,000.00	First National Bank, New York.
2,000,000.00	National Bank of Commerce, New York.
1,000,000.00	United States Trust Co., New York.
5,835,786.24	J. P. Morgan & Co., New York.

On October 20, also, nominees of the Erie were elected directors and general officers of the C., H. & D.

It seems advisable to show at this point what the carriers in the system had actually accomplished during the fiscal year ending June 30, 1905, toward earning their fixed charges. As stated at page 156 herein, the C., H. & D. had a minimum deficit for the year of $1,095,331.15, making no allowance for the fact that because certain of the company's obligations were issued during the year, less than a full year's interest had accrued thereon. The results in 1905 on the other roads of the system were as follows: The Pere Marquette fell $22,430.48 short of earning its fixed charges; the Chicago, Cincinnati

& Louisville did not even earn enough to pay operating expenses, and, after allowing also for taxes and interest, had a deficit of $450,509.80 for the year; and on the terminal company, earnings were not sufficient to pay operating expenses, and, with fixed charges added, the deficit for the year amounted to $228,799.05.

The Erie, therefore, in buying the C., H. & D. was not buying a system which was "then paying only its fixed charges," as president Underwood had stated to his board, but a system which had fallen short of doing so in the year ended June 30, 1905, by over a million and three-quarters of dollars, and which in the full year following would have to provide for even greater fixed charges. It must also be remembered that this enormous deficit was not the only obligation which the Erie was undertaking; it had also to meet annual interest charges of nearly a half million of dollars on its own securities issued to raise funds for that purpose.

Not long after the purchase was consummated the Erie came to realize the enormity of the burden which had been assumed. A trip over the properties proved highly educational and before it was fairly started president Underwood learned so much of the condition of affairs that he abandoned the train and hastened back to New York. On June 30, 1905, the C., H. & D. proper had outstanding short term and demand obligations in the form of loans and bills payable aggregating over $2,300,000. In addition there was $1,009,000 due on audited accounts which were unpaid because of lack of funds, not to mention sundry bills held up and not even vouchered for the same reason. It was quickly seen that the C., H. & D. would be wholly unable to perform its obligations under its lease of the Pere Marquette; that neither the Chicago, Cincinnati & Louisville nor the terminal company was earning operating expenses and consequently their interest charges and more would have to be met; that $15,000,000 of C., H. & D. notes would mature in about three years; and that heavy interest charges would fall due in January with no funds to pay them.

To put it in the language of the Morgan witness before this Commission, who at that time, the fall of 1905, was general solicitor for the Pere Marquette and C., H. & D., the situation was very bad and a receiver was inevitable. On December 4, 1905, both companies were placed separately in the hands of Judson Harmon as receiver.

Just prior to this, however, on November 28, the Erie's notes falling due, its executive committee met and authorized the company's officers to execute new notes, due not later than January 15, 1906. This was done, the accrued interest on the old notes being added into the face of the new. Curiously enough, this increase of

$78,905.25 in the Erie's obligations was not entered on its books. The new notes were taken by the following:

First National Bank, New York	$3,000,000.00
National Bank of Commerce, New York	2,000,000.00
J. P. Morgan & Co., New York	6,914,691.48

At this same meeting of November 28, J. P. Morgan himself appeared and offered to take the C., H. & D. stock from the Erie at the price paid therefor by it, because he understood some dissatisfaction was felt and had been expressed with reference to the purchase effected by his firm as agents of the Erie. The committee unanimously voted to recommend to the board the acceptance of the offer, and the board did so accept on the following day. The board at the same time voted to deliver to J. P. Morgan a copy, "suitably engraved, under the corporate seal and signed by every director," of the resolution of thanks passed at the meeting for—

his extraordinary service and assistance to the company; first, in his quick and efficient compliance with the direct personal appeal of the company through its president to obtain for it a large majority of the common stock of the Cincinnati, Hamilton & Dayton Railway Company; and, finally, after the development of doubt in this board as to the continuing ability of the Erie Company satisfactorily to maintain and extend that system, in view of the demands of its own railroad, in his magnificent, unparalleled, and absolutely voluntary offer himself to assume the entire purchase, and to relieve the Erie Company from all contracts and cost in connection therewith.

There is a good deal more to this "offer" than appears on the Erie minutes. The parallel columns below show the attendance of Erie directors at the meeting of September 20, 1905, when the C., H. & D. purchase through J. P. Morgan & Company was formally authorized and the meeting of November 29, 1905, when the earlier action was rescinded. At each meeting the action of the board was unanimous with reference to C., H. & D. matters.

September 20, 1905.	*November 29, 1905.*
F. D. Underwood.	F. D. Underwood.
George F. Baker.	George F. Baker.
J. J. Goodwin.	J. J. Goodwin.
	W. P. Hamilton.
	E. H. Harriman.
Wm. C. Lane.	Wm. C. Lane.
J. G. McCullough.	J. G. McCullough.
D. O. Mills.	D. O. Mills.
A. E. Orr.	A. E. Orr.
Norman B. Ream.	Norman B. Ream.
L. L. Stanton.	L. L. Stanton.
Francis Lynde Stetson.	Francis Lynde Stetson.
Charles Steele.	
H. McK. Twombly.	

The directors present on September 20 and absent on November 29 were Charles Steele and H. McK. Twombly. The former as a member of the firm of J. P. Morgan & Company had made the proposition to the Erie board which resulted in the purchase of the C., H. & D. stock, and the latter had been the first of the directorate to recommend that purchase. Also, it was Twombly to whom Newman Erb had in July, 1905, given full information concerning C., H. & D. affairs, and it was Steele, as an Erie director and a member of the firm of Morgan & Company, to whom Twombly had carried that information.

The directors present on November 29 who had not been present and recorded in favor of the proposed purchase of the C., H. & D. on September 20 were W. P. Hamilton, a member of the Morgan firm, and E. H. Harriman. The former had been elected on October 10, 1905, to succeed Robert Bacon, who had resigned from the board on September 27, 1905. Seemingly the only new influence in the board on November 29, not present on September 20, was E. H. Harriman. That there is great significance in this fact is evident from the testimony of president Underwood to the effect that Harriman was one of his principal mentors in advising him to go to Morgan in an effort to free the Erie from this overwhelming burden. President Underwood said:

> Several days before the rescindation process was had, I talked with Mr. Harriman in his office in the Equitable Building. Now, I can not give you any idea where he had been in the interim, but I very distinctly remember my conversation with him. I could not forget it, nor you could not forget it, if you had heard it, about what was necessary to be done. He said "you made the trade with Mr. Morgan yourself. No one was present. You had better go and see Mr. Morgan, and you had better not depend on anyone else but yourself. It is up to you. You had better go and better go now."

President Underwood's reference to Harriman's whereabouts prior to their interview arose from a question as to the accuracy of a report that the Erie's purchase of the C., H. & D. had transpired during Harriman's absence from the country. This record does not settle this point definitely, but it does show that Harriman did not attend any meeting of the board or executive committee during the period July 26 to November 1, 1905. The record also clearly indicates Harriman's emphatic disapproval of the purchase upon his return in November, with the result that president Underwood obtained another interview with Morgan, as to which he testified as follows:

> Then I went down and had an audience with Mr. Morgan, and I told him that practically the C., H. & D. had a floating debt that was not visible and in the statement he showed me. He said: "Well, we will look at the statement," and there was some attempt made to find that statement, but it was

unsuccessful; it was not produced. I had not kept it because—well, I did not keep it. I said: "Mr. Morgan, the statement that I made to you of the effect of the acquisition of the C., H. & D. on the Erie's finances is null and void, because the statement was inaccurate." He looked at me and said: "Well, sir, if the statement that we made to you was inaccurate, and for any reason you think that the Erie Railroad has made a bad trade, your duty is very simple—you have only to convene your board of directors and rescind it, and I advise you to do it at once."

I bade him good afternoon and walked out of his office, and as I came out of his office I met Mr. Stetson, and I told him, being counsel, "Mr. Morgan has just authorized the rescinding of that trade, and I think it was a very unusual and extraordinary thing for him to do. I am surprised that he would do it. And I wonder if it would be bad taste for me to tell him that." He said: "He might like to hear it." So I went back, and Mr. Morgan was standing with a paper in his hand, and I said, "I would like to speak to you for a minute." He made no answer. I said again, "I would like to speak to you for a minute." I said, "I want to tell you I think you have done a very big thing, the biggest thing I ever came in contact with." He said nothing. I said, "Did you hear me?" He said, "I did, sir." And I walked out.

The freeing of the Erie from its purchase was formally accomplished through an agreement dated December 2, 1905, with J. P. Morgan whereby the Erie agreed to sell its C., H. & D. stock at the price paid under the purchase contract. While Morgan assumed this obligation personally, the firm paid for the stock and treated it as a firm matter without formal assignment from him. On January 15, 1906, the Erie received notice from the Morgan firm of the cancellation of its notes and the purchase of the stock at the cost of such cancellation, namely, $12,008,023.22, which sum included $54,-165.08 of interest on the portion of notes held by that firm.

In conclusion on this subject there may well be quoted from the record Harriman's views thereon, as stated in his letter of thanks to Morgan, after the Erie had been freed from its purchase, as follows:

It was too great an undertaking for the Erie, and would have resulted, I fear, in disaster to it.

VI. MORGAN CONTROL OF C., H. & D., 1905–1909.

1. *Efforts to rehabilitate the C., H. & D. and Pere Marquette.*—The repurchase by Morgan & Company from the Erie of the C., H. & D. stock was promptly followed by action designed to save as much of the wrecked properties as possible. This was along four lines, as follows:

First. Rescission of corporate acts and contracts designed to pay additional unreasonable commissions to Prince and to transfer from the C., H. & D. to the Detroit, Toledo & Ironton valuable dock properties in Toledo, rights to trackage and terminal facilities, and rights and properties connected with the project to bridge the Ohio River at Ironton.

Second. Appointment of receivers.

Third. Rescission of the purchase of the Chicago, Cincinnati & Louisville and collateral transactions.

Fourth. Cancellation of the lease of the Pere Marquette to the C., H. & D., with a consequent adjustment of all controversies between them.

It is interesting to note that when the control thus returned to Morgan & Company very few changes were made in the directorates of the C., H. & D. and Pere Marquette, the Erie appointees for the most part remaining in office through the period of attempted rehabilitation to the sale to the Baltimore & Ohio in 1909. The important change in each board was that George W. Perkins, member of the Morgan firm, became a director of both roads on December 4, 1905.

The four salvage plans we shall now consider in the order named.

a. *Rescission of C., H. & D. contracts.*—On November 29, 1905, the day that the Erie board voted to accept the offer of Morgan to take back the C., H. & D., the executive committee of the latter road met at New York City, there being present Underwood, Baker, and Ream, all Erie directors. By unanimous vote a resolution was adopted which included the following preamble:

Whereas facts have been brought to the knowledge of this committee from which it appears that certain resolutions have been adopted or purport to have been adopted and certain contracts made or are claimed to have been made by certain directors and officers of this company who were interested in and with the other party to such alleged contracts and transactions which were and are prejudicial to the interests of this company, and were and are in the interest of such other party; and in order that the transactions in question may be fully investigated and steps taken to protect the interest of this company and its stockholders and to do what is right in the premises,

and which provided for the rescission of all resolutions passed and all action theretofore taken by the board or the executive committee: (1) Authorizing an agreement granting the Detroit, Toledo & Ironton the use of the railroad and terminals of the C., H. & D. system at Toledo, Detroit and other places; (2) selling, transferring or disposing of the stock or property of the Ashland & Ironton Bridge Company or of the Ohio River Construction Company, or of the Toledo & Ohio River Railway Company, or of the C., H. & D. rights in said companies except the transfer of the stock of the Ashland & Ironton Bridge Company to the Michigan Securities Company; (3) authorizing the transfer of the company's interest in the capital stock or property of the Great Central Dock Company; (4) authorizing the payment of a claim made by F. H. Prince & Company for alleged services rendered; (5) authorizing the making of an agreement with the Detroit, Toledo & Ironton respecting switching of cars at Wellston and to various coal mines in the vicinity of Wellston.

The first three of these subjects, and also the fifth, refer to various acts of the Hollins management looking to the expansion of the Detroit, Toledo & Ironton at the expense of the C., H. & D. Definite facts as to the fifth subject are not of record, but the first three have been already covered herein, *ante*, page 148. The fourth matter also has been detailed at length, see page 130, herein. As to each the acts of the Morgan management in the interest of the C., H. & D. are there related in full and need not be here repeated.

b. *Appointment of receivers, December 4, 1905.*—On December 4, 1905, Morgan & Company through an employee, Walter B. Horn, filed a bill of complaint in the circuit court of the United States for the southern district of Ohio against the C., H. & D., which resulted in the appointment of Judson Harmon as receiver on that day. At the same time he was also appointed receiver of the Pere Marquette. It is not essential at this point to give in detail the condition of those properties at that time or the specific matters on which the appointments were based, it being the intention now merely to record the action to show one of the important steps taken by the Morgan firm in its attempt to rehabilitate the roads. The results of the receiver's operation will be separately stated later.

c. *Rescission of purchase of Chicago, Cincinnati & Louisville.*—Another of the entanglements in the affairs of the C., H. & D. and Pere Marquette which was encountered by the Erie immediately after assuming control and which was of major importance in the Morgan program of rehabilitation concerned the obligations undertaken by these two roads incident to their purchase of control of the Chicago, Cincinnati & Louisville, on July 7, 1904. Just prior to the latter date, namely, on July 5, $3,500,000 of Pere Marquette bonds in temporary form were delivered to a representative of the trustee thereunder, the American Loan & Trust Company, of Boston, Mass., for completion by indorsement of its certification and for delivery to holders of Chicago, Cincinnati & Louisville stock who were depositing the same in exchange for such bonds. This arrangement had been required by the Chicago, Cincinnati & Louisville interests as a condition precedent to their payment of the first call on the $625,000 subscription to the C., H. & D. common-stock syndicate, made by George A. Fernald & Company, on behalf of Wm. A. Bradford, jr., the principal owner of the Chicago, Cincinnati & Louisville stock. According to the plan, these bonds were to be guaranteed by the C., H. & D., but though the guaranty had been formally authorized it was never actually indorsed on the bonds. Nor were the bonds ever written up as a liability on the books of the Pere Marquette, the comptroller of that company never having been notified of the execution and delivery thereof.

Another feature of the plan was a lease to the C., H. & D. of the Chicago, Cincinnati & Louisville mileage in Ohio and a grant of certain running rights over the latter's tracks in Indiana. While the operations were conducted by the C., H. & D. officials there seems to have been no prior formal execution of the lease agreement. Corporate action thereon was taken as late as July 10, 1905, by the executive committee, September 6, 1905, by the board, and October 10, 1905, by the stockholders. Delay also occurred in the substitution of joint C., H. & D.-Pere Marquette bonds for the original issue of Pere Marquette bonds. This delay extended over the option period provided in the original indenture, necessitating a supplemental agreement which was approved by the corporate authorities of the C., H. & D. on the dates just given. Here again it should be noted that the action by the C., H. & D. management and stockholders finally approving the lease and the joint bond issue was taken presumably in anticipation of transfer of control to the Erie. Significant also is the effect of the news of the Erie purchase upon the market for these bonds. The best price quoted up to this time on the bonds was 80, which according to Bradford, the principal beneficiary thereunder, was about the market value "before they (meaning evidently the Hollins crowd) began their system of high finance." Even at that price purchasers evidently were not found, for the record shows that as late as September 20, 1905, the firm of Rudolph Kleybolte & Company agreed to purchase from Bradford the entire issue of $3,500,000, exchangeable for the new joint bonds after proper ratification by the C., H. & D. stockholders at a meeting to be held on October 10, 1905. The price agreed to be paid, 95 and interest, was one which would be truly amazing were it not for the information that Bradford received a few days before from Steele, of the Morgan firm, that the C., H. & D. had been sold to the Erie.

The purchasers, Kleybolte & Company, had accepted and paid cash for 1,115 of these bonds up to the time the C., H. & D. was thrown into receivership, and further deliveries thereafter were impossible. The joint bonds were in process of execution when the completion and delivery thereof were stopped by the Erie management on November 6, 1905. On December 15, Bradford as president of the Chicago, Cincinnati & Louisville, addressed a letter to the C., H. & D. calling upon it to complete and deliver the joint bonds according to the contract for the purchase of the Chicago, Cincinnati & Louisville. This letter was brought before the C., H. & D. board on December 20, 1905, whereupon that body voted to rescind and annul any and all action or obligation theretofore taken by it in the acquisition of an interest in the Chicago, Cincinnati & Louisville;

to cancel all bonds or contracts executed or delivered in connection therewith; and to direct and authorize the officers of the company to take proper action for the protection of the company's interests in the premises. On the same day similar action was taken by the board of the Pere Marquette rescinding and annulling its contracts and obligations with respect to the Chicago, Cincinnati & Louisville.

As heretofore stated, one of the terms of the contract under which the Chicago, Cincinnati & Louisville stock was sold provided that the sellers should care for the interest on the Pere Marquette bonds received by them for their stock for one year beginning July 1, 1904. The six months' interest on these bonds which matured January 1, 1906, was defaulted and two actions at law were brought to recover the same, one by Rudolph Kleybolte & Company on January 24, 1906, to recover on 1,115 coupons and one by Wm. A. Bradford, jr., on February 1, 1906, to recover on 2,385 coupons. The Pere Marquette, having first obtained an order restraining the assignment of the bonds, etc., filed a bill in the circuit court of the United States for the western district of Michigan, praying that an injunction issue against the prosecution of the two suits, and also for rescission of the contract under which the Chicago, Cincinnati & Louisville stock was bought, and cancellation of the bonds issued in payment. In rendering his decision granting the preliminary injunction Judge Lurton, afterwards Mr. Justice Lurton of the Supreme Court of the United States, made this comment on the bill:

> Indeed, one can not read its averments without concluding, if the facts charged are true, that the case furnishes an example of the most pernicious methods of what has come popularly to be known as modern "high finance." *Pere Marquette R. Co.* v. *Bradford et al.*, 149 Fed., 492, at 493.

The testimony taken in these proceedings is now a part of the record before us. The litigation was settled out of court, the basis of settlement being the cancellation of all bonds; the annulment of all contracts and indentures bearing on the transactions; the return of the Chicago, Cincinnati & Louisville stock, 28,661 shares to Bradford and 13,399 shares to Kleybolte & Company; the payment to Bradford of $400,000 in the certificates of the receiver of the Pere Marquette; the cancellation of advances made to the Chicago, Cincinnati & Louisville to January 1, 1906, amounting to $423,009.34 by the Pere Marquette, and to $467,831.29 by the C., H. & D.; the discontinuance of all suits involved; and the grant to the Chicago, Cincinnati & Louisville of trackage rights over certain C., H. & D. terminal tracks at Cincinnati.

This settlement, however, in no way disposed of the claims which the Pere Marquette had against the C., H. & D., or vice versa, in

connection with any of the transactions involved. These were ultimately disposed of in the so-called Harmon-Crapo arbitration, to be next discussed.

d. *Rescission of Pere Marquette lease, leading to Harmon-Crapo arbitration.*—At their meeting on December 20, 1905, the C., H. & D. directors rescinded, revoked, and annulled every resolution and contract adopted or entered into, authorizing or purporting to authorize the lease of the railroads of the Pere Marquette, the minutes stating:

> Counsel having advised that such resolutions and contracts are in contravention of the laws of the state of Ohio, are beyond the corporate power of the company, and are illegal.

This was another step taken by the Morgan people in their effort to rehabilitate the properties, and one which required some time for its accomplishment. The company's officers were authorized to take proper action to put the resolution into effect, including the surrender of all property held under the lease and all capital stock of the Pere Marquette received in pursuance of the lease. It will be remembered that the C., H. & D. had, through the lease arrangement, acquired the ownership of 14,878 shares of Pere Marquette preferred stock, and 18,344½ shares of its common stock. This same resolution of December 20, 1905, requested receiver Harmon to apply to the court for authority to take proper action for the surrender of the rights of the C., H. & D. in such Pere Marquette property and stock.

Subsequently, on August 21, 1907, the board authorized the execution of an arbitration agreement on behalf of the C., H. & D. between that road, the Pere Marquette, and a committee consisting of Nathaniel Thayer, William W. Crapo, Mark T. Cox, George H. Norman, and Francis R. Hart, which then controlled certain Pere Marquette stock. This agreement contemplated an arbitration of the claims asserted by each carrier against the other under the lease, "and for divers other causes and reasons." The original agreement is missing, but the draft authorized shows quite clearly that one reason for the step taken was to assist the Pere Marquette out of its receivership through a reorganization then under way, which contemplated the use by the Pere Marquette of its treasury stock, which had been acquired by the C., H. & D. under the lease, as a bonus to induce subscriptions for Pere Marquette 6 per cent debentures, of which $5,000,000 were to be issued under the Morgan reorganization plan.

By this agreement W. W. Crapo, long a prominent figure in the old Flint & Pere Marquette, and Judson Harmon, then receiver of both the C., H. & D. and Pere Marquette, were named as arbitrators, to whom both roads agreed to submit "every claim of

every kind and nature which they may now have, one against the other, whether arising from or under the said contract and the said lease or otherwise," for arbitration and settlement, and both roads agreed in advance to accept the result of the arbitration. It was made mandatory upon the arbitrators that they should adjudge the contract and lease terminated and canceled from and after a date to be fixed by them. This agreement also required the C., H. & D. to turn over to the Pere Marquette the 14,878 shares of the latter's preferred and the 18,344½ shares of its common stock, then held in the C., H. & D. treasury. Further, the C., H. & D. agreed that all Pere Marquette stock which it, the C., H. & D., had the right to vote should be voted in favor of the proposed reorganization. This entire agreement for arbitration was ratified by the C., H. & D. stockholders on October 8, 1907.

The finding and award of the arbitrators, dated April 30, 1908, was presented to the United States circuit court for the southern district of Ohio on that day. The arbitrators adjudged that under the following conditions the Pere Marquette lease to the C., H. & D. should be terminated and canceled as of December 4, 1905, which was the day both lines went into the receiver's hands: (*a*) The Pere Marquette was to receive from the C., H. & D. the sum of $1,364,387 in full settlement of all claims, each road against the other; and (*b*) the title of the Pere Marquette to its portion of certain equipment included in the Kleybolte equipment trust of April 1, 1905, was to be secured to it through the carrying out of stipulations signed by counsel for both carriers and made a part of the award. The Pere Marquette assumed the portion of the unpaid equipment notes of the C., H. & D. so far as the same represented such equipment, it having previously paid its proportion of said notes as they serially matured.

The then general counsel of the Pere Marquette testified in this investigation that he had made prominent before the arbitrators the claim of his company against the C., H. & D. for substantial loss on account of the purchase of terminal company stock. He stated that while it was not clear from the award just how the sum awarded the Pere Marquette had been reached he had always believed that it had been based largely, if not entirely, on this terminal company stock transaction, "for there was no other theory upon which they could reach that sum or approximately that sum." Attention is called to the recital of the arbitrators in the award that—

The purchase of the entire capital stock of the Toledo Railway & Terminal Company was made in fact for the common benefit of both the C., H. & D. and the Pere Marquette, bonds of the latter to the amount of $1,645,000 having been issued in payment therefor. Said stock was, when so bought, worth much less than the price paid therefor.

As stated, the award was dated April 30, 1908. A proper entry was prepared by the accounting department of the C., H. & D. on July 30 to record its obligation in consequence thereof, but it was not then made. Why this large obligation was not then recorded does not appear, but its omission from the C., H. & D. accounts was upon the advice of general solicitor Frederick W. Stevens and director George W. Perkins. The representative of the Baltimore & Ohio who was investigating C., H. & D. finances in the summer of 1908 included the $1,364,387 in his list of exceptions to the profit and loss account of the latter road, meaning thereby that it should then have been charged to that account. This debt was not entered in the C., H. & D. accounts until August, 1909, when it was immediately canceled on account of the satisfaction thereof through the issuance to the Pere Marquette of $1,364,000 par value of new C., H. & D. general mortgage bonds which were being put out as a part of the readjustment incident to the Baltimore & Ohio purchase.

On the Pere Marquette books the first entry on account of the C., H. & D.'s debt under the arbitrators' award was made in August, 1909, when the $1,364,000 of C., H. & D. general mortgage bonds were written into the assets at a nominal value of $1. The acceptance of these bonds in satisfaction of the debt of the C., H. & D. had been approved by the Pere Marquette board on August 3, 1909. In June, 1910, the book value of these bonds was increased to $818,400, or 60 per cent of the face value, as fixed by the board of directors at a meeting on April 14, 1910.

2. *Issuance of purchase money collateral trust notes.*—We have stated in connection with the rescission of the Pere Marquette lease that to aid the reorganization of that company the arbitration agreement of August 12, 1907, required the surrender by the C., H. & D. of the 14,878 shares of Pere Marquette preferred stock and 18,344½ shares of its common which had been acquired by the lessee under the terms of the lease, and further required the C., H. & D. to vote the other Pere Marquette stock held by it in favor of the reorganization. When application was made to secure the proper authority to vote that stock, 110,000 shares, unexpected opposition was encountered from the committee of the holders of C., H. & D. refunding mortgage bonds under which the stock was pledged. This committee had been formed under the terms of an agreement dated December 9, 1905, only a few days after the receivers of the two roads had been appointed. It was composed of James N. Wallace, president of the Central Trust Company, Frederick Strauss, a partner in the firm of J. & W. Seligman & Company, and Mark T. Cox, head of the firm of Robert Winthrop & Company. They

had failed to get desired information from the receiver concerning the condition of the properties, and when the request came for their consent to vote the stock pledged under their bonds they refused it. In the words of Mr. Strauss—

> We realized that it was the only opportunity that we had for compelling the junior interests, who were playing a waiting game, to meet us openly and frankly and to tell us of their plans.

Prolonged negotiations ensued, principally with George W. Perkins, of Morgan & Company, and there finally resulted a settlement expressed in an agreement dated December 6, 1907. There were then $11,307,000 of these bonds outstanding. Under this the committee were to vote their stock in favor of the reorganization, providing the C., H. & D., with the consent of Morgan & Company, agreed to purchase the refunding bonds by exchanging therefor at par new 5½-year notes bearing the same rate of interest and secured by the refunding bonds received in exchange. These notes also were to be redeemable at par on any half-yearly interest day on 60 days' notice, and one of the events of default was to be a default on the $5,000,000 of Pere Marquette debentures to be issued in the proposed reorganization of that road. The refunding mortgage was to be closed except for the issuance of bonds required thereunder for the refunding of prior bonds maturing before July 1, 1913. The C., H. & D. also agreed to provide a supplementary mortgage under which the refunding bonds thus pledged should mature on July 1, 1913, or should earlier become due if the notes became due through the happening of any of the named events of default. This settlement agreement, as well as the supplement to the refunding mortgage and the indenture underlying the new notes, both dated January 1, 1908, were approved by the board on December 30, 1907, and by the stockholders on February 7, 1908.

The advantage gained by the old bondholders was that the new arrangement gave them the strategical position in any reorganization of holding 5½-year notes instead of 50-year bonds, and this was practically the only advantage gained by them in the exchange. The subsequent history of these notes, including their guaranty by the Baltimore & Ohio, forms a part of the story of the readjustment of 1909 based on the purchase of C., H. & D. control by the Baltimore & Ohio.

VII. THE RECEIVER'S ADMINISTRATION, 1905–1909.

On June 30, 1904, just before the exploitation period began, the outstanding capital stock of the C., H. & D. was $15,991,300, consisting of 79,996 shares common and 79,917 shares preferred, and the

funded debt was $12,345,848. During the following year fixed interest-bearing obligations were added as follows:

Equipment trust notes, 4½ per cent	$2,920,000
Refunding mortgage bonds, 4 per cent	8,250,000
Collateral trust notes, 4½ per cent (maturing Sept. 1, 1908)	15,000,000
Total	26,170,000

This created an annual increase of $1,136,400 in the fixed charges, decreasing slightly as each partial payment of the equipment trust notes was made. True, the dividend on the bulk of the 5 per cent preferred stock was eliminated, but as this dividend had not been cumulative it can not be looked upon as a fixed charge. A small increase in the fixed charges had been occasioned also by the retirement of the 4 per cent guaranteed preferred stock through the sale, at a discount, of 4 per cent bonds of a subsidiary company, which were owned by the C., H. & D.

Another serious menace to the road's stability was the increase in that same year to June 30, 1905, from $17,000 to a total of $2,312,627.03 in loans and bills payable. The receiver, when he assumed control on December 4, 1905, faced large accumulations of vouchers which could not be sent out to payees because of lack of funds, and large accumulations of bills which for the same reason had not even been vouchered.

During the 3½ years of the receiver's administration about $1,000,000 of equipment notes were paid off. Loans and bills payable increased to an aggregate of $3,165,294.79 on June 30, 1909, audited accounts and wages payable increased to $1,884,168.80, and 6 per cent receiver's certificates were put out amounting to $1,127,128, of which $955,298 were still outstanding on the date named. Of the receiver's certificates, $103,468 had been issued to purchase 10 switch engines and the balance, $1,023,660, for the payment of funded debt interest maturing on January 1 and July 1, 1906. The $15,000,000 of collateral trust notes matured September 1, 1908, interest thereon having been defaulted since March 1, 1906. The interest on other C., H. & D. bonds was defaulted as follows: July 1, 1908, on the 4 per cent purchase money notes and the 4 per cent refunding mortgage bonds; October 1, 1908, on the Cincinnati, Dayton & Chicago bonds; and November 1, 1908, on the Cincinnati, Dayton & Ironton bonds. Among the proprietary lines defaults occurred as follows: July 1, 1908, on the 4 per cent Cincinnati, Indianapolis & Western bonds and the 5 per cent Indiana, Decatur & Western bonds; and November 1, 1908, on the 4 per cent Cincinnati, Findlay & Fort Wayne bonds.

The statement inserted below shows a condensed income account of the C., H. & D. for the fiscal years ending June 30, 1906 to 1909,

inclusive. The receiver was appointed December 4, 1905, so that the property was under his control for only about seven months of the fiscal year 1906. On account of the promulgation, effective July 1, 1907, of a uniform system of accounts by this Commission, certain items in this statement for the first two years are not exactly comparable with like figures for the last two years, and it should also be explained that the apparent decrease in funded debt interest for 1909 is due to the maturity on September 1, 1908, of the $15,000,000 of collateral trust notes. This required the classification in this statement of the $562,500 interest thereon which was accrued on the books after that date as "other deductions."

Item.	Year ended June 30, 1906.		Year ended June 30, 1907.		Year ended June 30, 1908.		Year ended June 30, 1909.		Total 1906-1909.	
Gross earnings from operation	$8,398,417.96		$9,071,374.69		$7,960,612.41		$7,897,047.87		$33,327,452.93	
Operating expenses	6,616,227.10		7,085,266.24		6,797,197.34		6,501,593.66		27,000,284.34	
Income from operation		$1,782,190.86		$1,986,108.45		$1,163,415.07		$1,395,454.21		$6,327,168.59
Taxes		492,294.78		279,457.83		302,013.04		306,002.07		1,379,767.72
Net deficit, auxiliary operations		....		....		*13,965.77*		....		*13,965.77*
Railway operating income		1,289,896.08		1,706,650.62		847,436.26		1,089,452.14		4,933,435.10
Income from other sources		138,170.05		125,545.90		313,687.06		116,341.39		693,744.40
Gross income		1,428,066.13		1,832,196.52		1,161,123.32		1,205,793.53		5,627,179.50
Deductions from gross income:										
Rents paid for lease of road	324,367.80		324,368.28		324,368.30		324,368.21		1,297,472.59	
Interest accrued on funded debt	1,754,090.56		1,779,044.43		1,766,514.61		1,184,394.95		6,484,044.55	
Other deductions	702,008.88		590,137.66		744,142.70		1,388,952.15		3,425,241.39	
Total deductions from income		2,780,467.24		2,693,550.37		2,835,025.61		2,897,715.31		11,206,758.53
Net deficit		*1,352,401.11*		*861,353.85*		*1,673,902.29*		*1,691,921.78*		*5,579,579.08*
Dividends on preferred stock		5,150.00		....		....		....		5,150.00
Deficit carried to profit and loss		*1,357,551.11*		*861,353.85*		*1,673,902.29*		*1,691,921.78*		*5,584,729.08*
Mileage operated (single track) on June 30		1,038.24		1,037.80		1,037.80		1,036.05		

Further, in connection with the foregoing statement, although the lease of the Pere Marquette was not formally broken until April, 1908, there was no accrual of rental written on the books of the C., H. & D. subsequent to November, 1905, and that written up for July to November was subsequently canceled. So that the gross deficit of $5,584,729.03 for the four years represents the results on the same property operated under much the same conditions as those obtaining when the Baltimore & Ohio undertook to make it pay, the chief difference being in capitalization, due, as will be afterwards explained, to the readjustment of 1909.

The breaking of the Pere Marquette lease with the attending settlement of all claims of the two parties thereunder, one against the other; the freeing of the C., H. & D. from the entangling obligations involved in the purchase of the Chicago, Cincinnati & Louisville; and the recovery of the Toledo dock property and Ashland & Ironton bridge property from the Detroit, Toledo & Ironton, together with the recission of the trackage and terminal contract with that road, were all accomplished by the Morgan control during the receiver's administration, as already recited herein.

VIII. PURCHASE OF CONTROL BY BALTIMORE & OHIO AND READJUSTMENT OF C., H. & D. FINANCES, 1909.

The entire plan of 1909 for readjusting the finances of the C., H. & D., paying off its defaulted interest and floating debt, releasing the road from the receivership, and providing working capital and funds for necessary improvements, all without foreclosure, was predicated on the sale of 74,097 shares of the common stock of that company by Morgan & Company to the Baltimore & Ohio Railroad Company. As previously indicated herein this block of stock represented an actual voting control of the corporation, there being only 5,899 additional shares of that issue outstanding besides a relatively small amount of preferred stock. At this point it may be said again that as a result of the 1895 consolidation by which the company was formed the entire issue of common stock represented mere bonus. On behalf of Morgan & Company it was testified that during the period of the negotiations for the sale and up to the time thereof, Morgan & Company were not in any way interested in the Baltimore & Ohio, owned no stock of that carrier, and had no representation on its board of directors.

In connection with *The Five Per Cent Case*, *supra*, this Commission requested Daniel Willard, the president of the Baltimore & Ohio, to furnish the facts as to the financial history of the C., H. & D. and its relation to the Baltimore & Ohio. This was done, and he presented his statement at a hearing on May 29, 1914, his testimony and exhibits pertaining thereto being made a part

of the record of this investigation. His recital of the acquisition and exercise of control over the C., H. & D. began with the proceedings of the Baltimore & Ohio board at its meeting on February 5, 1909, at which a proposal of sale was presented from Morgan & Company, further facts as to which will later be given.

The question of acquiring C., H. & D. control had been under consideration at various times since 1899, and was actively taken up by the Baltimore & Ohio almost eight months prior to the meeting of February 5, 1909. The record before us shows that on June 26, 1908, Oscar G. Murray, then president of the Baltimore & Ohio, addressed a letter to George W. Perkins, of the firm of Morgan & Company, introducing Major H. D. Bulkley, comptroller of the Baltimore & Ohio, as its confidential representative in the matter, and requesting that instructions be given for "the exhibition to him of all data that pertains to the situation." Major Bulkley made an extensive examination of the C., H. & D.'s affairs and finances, being furnished a large amount of information by J. L. Cramer, then comptroller of the C., H. & D. Under date of July 31, 1908, he rendered a voluminous report to president Murray, which was finally secured for this record.

The Bulkley report consists of the general balance sheet of the C., H. & D. for April 30, 1908, as prepared by that company and as revised by Major Bulkley, an income statement made comparative by years back to 1898, analyses of mortgages underlying the funded debt, analyses of leases, a statement of mileage, and schedules of supporting details. It shows that including estimated figures for June, 1908, the road would fail to earn its fixed charges in the year ending with that month by over $1,737,000, and that the results for 1906 and 1907 were deficits of $1,147,630.70 [1] and $861,353.85, respectively. The balance sheet showed cash on hand as $43,264.47; amounts due from agents and conductors, $362,127.07; and net traffic balances due, $257,452.99; against which were the following current liabilities: Accounts payable for current expenditures, $1,911,267.60; pay rolls and unclaimed wages, $265,675.59; bills payable, $50,000; call loans, $3,030,294.79; matured interest unpaid, $1,690,142.50 net; and interest, taxes, and rentals accrued but not due, $980,576.12. Particular attention was directed in Bulkley's report to the coming maturity on July 1, 1913, of the purchase money notes, $10,004,000 then being outstanding of the $11,557,000 to be issued, and mention was also made of the maturity on January 1, 1911, of $2,728,000 of bonds of the Dayton & Michigan, a C., H. & D. subsidiary. It was pointed out that annual installments on equipment trusts amounted to

[1] Difference between this amount and the deficit shown in the statement on page 184 can not be accounted for.

$223,256.44, and the following very significant statement was made respecting the road's equipment:

Incidentally I learn that a large number of freight cars are very old and have little more than a scrap value. An actual inventory and revaluation, on the basis of age, condition, and earning power, would, in my judgment, be the only means of ascertaining the true value, and I earnestly recommend that this be done.

The representative of the Baltimore & Ohio also found and reported that large amounts were being carried in the company's asset accounts which properly should have been charged off to operation or against income, and he adjusted the profit and loss account accordingly. His inclusion therein of such items and certain uncollectible assets, together with the $1,364,387 due the Pere Marquette on account of the Harmon-Crapo arbitration award, increased the company's deficit from $595,567.19, as carried on the books, to $6,221,646.69. Major Bulkley's concluding statement was as follows:

Owing to the condition of railway affairs throughout the entire country and the complicated status of the C., H. & D. financial matters, I refrain from making any comment on the earning power of the system or suggestion as to the reorganization. From the facts presented in this report it will be readily seen that it is a bankrupt concern and will require drastic treatment to enable it to earn a fair interest on the capital invested.

If any further investigation was made by the Baltimore & Ohio management of C., H. & D. affairs, we have not been informed of it. The next action, according to this record, was that taken by the board of directors on February 5, 1909, when president Murray presented the above-mentioned proposal from J. P. Morgan & Company.

This proposal expressed the belief that after June 30, 1910, the net earnings of the C., H. & D. available for rentals, taxes, and fixed charges would be $3,000,000 annually, it being anticipated that by that time the rehabilitation of the property, costing about $4,500,000, would have been completed, and certain readjustments made with connecting lines, etc., which would yield an estimated net of $725,000, of which $450,000 could be counted on with reasonable certainty. On this basis the road could pay all of its fixed charges, including those involved in the proposed readjustment of its finances, and have a net income of $192,000 remaining annually. It is noteworthy that these estimates did not include any allowance for interest on the $15,000,000 of collateral trust notes, as it was thought that such notes and certain floating debt could be covered by an issue of $20,000,000 of new income or second mortgage bonds which the Baltimore & Ohio would not be required to guarantee, and on which the payment of interest could be deferred for a considerable time.

Another feature of the Morgan proposal involved a new series of C., H. & D. refunding bonds, of which $12,500,000 were to be issued

immediately, $5,500,000 thereof for receiver's and other cash obligations, $5,000,000 for expenditures on the property, and $2,000,000 for working capital. The Baltimore & Ohio was to guarantee the principal and interest of these $12,500,000 of new bonds and also of $11,500,000 of notes then outstanding, due July 1, 1913. It was expected that all the debts and obligations of the C., H. & D. could thus be met and the property delivered free from all entanglements without it being necessary for the Baltimore & Ohio to make any immediate outlay of cash, either in connection with the readjustment of C., H. & D. finances or in the purchase of its stock.

Under the Morgan proposal, also, the C., H. & D. stock was to be put in a voting trust, with three trustees, one chosen by the sellers, one by the Baltimore & Ohio, and the third by these two. The Baltimore & Ohio was to be given the right to purchase the stock at any time prior to January 1, 1915, at its cost to Morgan & Company as of January 15, 1906. If this option was not exercised the Baltimore & Ohio was to agree to buy the entire holding on January 1, 1915, at a price to be then agreed upon between the Baltimore & Ohio and the sellers or, in case of disagreement, at a price to be then fixed by arbitration. It was pointed out that the gross earnings of the Baltimore & Ohio would probably be increased by $750,000 per annum, of which about one-half would be net, and that the control of the C., H. & D. would carry also a working control of the Pere Marquette Railroad and an important interest in the Cincinnati, New Orleans & Texas Pacific Railway Company, the latter through the Southwestern Construction Company.

The Baltimore & Ohio board voted to refer the whole matter to a committee of five which was to be appointed by the president, he to be one and chairman, and which was to report conclusions and recommendations to the board. The committee was composed of Oscar G. Murray, chairman, Samuel Rea, Joseph Wood, Norman B. Ream, and L. F. Loree, and rendered a report dated 11 days after its appointment, at a board meeting on February 18, 1909.

In this committee report the proposal from Morgan & Company was again outlined, substantially as above. It stated with reference to the proposed issue of $20,000,000 of income bonds that they were to be made a straight income bond, if possible, but that it might be necessary to name a date when fixed interest would commence to run. The committee expressed the hope that the fixed interest would start at a rate as low as 1 per cent some years thereafter and not reach the full 4 per cent or 4½ per cent until about 10 years. The report also stated that the Baltimore & Ohio should have the right to administer and operate the C., H. & D., the voting trustees being obligated to vote for a majority of the directors as nominated by the Baltimore & Ohio,

one of such nominees to be elected president. A forecast as to the probable results of operation for the years ended June 30, 1910 to 1915, inclusive, was made by the committee, "in order to ascertain whether this may eventuate as profitable on behalf of the Baltimore & Ohio, and whether it can be made a self-sustaining property."

The committee's forecast started with $9,000,000 as the estimated gross revenues for 1910, and assumed that the average increase each year thereafter would be 6 per cent of the gross of the respective previous year. It also assumed that in 1910 and 1911 the C., H. & D. could not be operated on a ratio of less than 75 per cent, but that thereafter it could be operated for 70 per cent on account of improvements in facilities and "improved management." Because the hire of equipment balance for the first six months of 1909 had shown a charge of $39,000 as against a credit balance of $160,000 which it was thought might reasonably be expected in a normal year, the committee allowed an income credit of $60,000 annually on account of that item. Taxes were estimated for the full six-year period at $300,000 per annum, the approximate accruals in 1908 and 1909, and no allowance was made for interest at any time during the six years on the proposed $20,000,000 of new income bonds.

This committee's forecast, stated in its report to be on "conservative lines," reached the conclusion that, while there would be a deficit on the C., H. & D. in 1910 and 1911 of some $970,000, the surplus of the four succeeding years would be such that there would remain $870,000 net surplus from the business of the six years, 1910 to 1915, or an average of $144,950 per year. The report pointed out that before any of the profit became available as dividends on the stock, some interest probably would have to be provided on the proposed income bonds. The committee also believed that various changed conditions of operation and traffic might result in increased net earnings of $625,000 per annum, of which $300,000 might be expected to materialize. It was also stated that the officers of the Baltimore & Ohio, after careful consideration, estimated that the gross revenue of their system would be increased by from $750,000 to $1,500,000 by making the C., H. & D. a part thereof and that 60 per cent of such increase would be profit. The committee estimated this "conservatively" at $1,000,000 in gross, with a profit of 50 per cent, or $500,000.

The report of the committee was summed up in the following paragraph:

It seems reasonable on these bases that at the end of the six-year period the company will, in addition to adequately maintaining the railroad, its equipment, and facilities, be earning sufficient to meet all its charges, provide additions and betterments, and begin a moderate return on the income bonds.

The consequent acquisition of interest in the Pere Marquette, in the Queen & Crescent route, and in the terminal company, was treated of, and the report further states:

It has been recognized for many years that the property would be a valuable acquisition to the Baltimore & Ohio system, and owing to the peculiar circumstances now surrounding the ownership of the stock, it is doubtful if there will again occur an opportunity for its acquisition on as favorable terms, because if it is not taken now the bankers will be forced to reorganize and run it as best they can, whereas if purchase is made as now proposed, then for the term of the agreement the Baltimore & Ohio will have as active agents and partners the influential house of J. P. Morgan & Company, making every effort to effectuate a reorganization on the most conservative basis, and endeavoring to increase the revenues of the company to make their stock as valuable as possible.

The committee expressed the opinion that it would be wise for the Baltimore & Ohio to acquire control of the C., H. & D. in view of the conservative showing and—

in view of the anticipated injurious effect on the Baltimore & Ohio system if this property should be carried by others through this period, and then acquired by other railroad interests running to the seaboard.

and recommended that the company take steps toward entering into an agreement with Morgan & Company substantially as outlined in the report.

After "full discussion," as the minutes put it, the president and directors unanimously resolved that the report of the committee be accepted, that the committee be continued, and that the president be authorized to negotiate with J. P. Morgan & Company an agreement generally as outlined in the committee's report, and submit the same to the board.

The absence from the committee report and from the Bulkley report of any but general comments respecting the Pere Marquette would lead to the conclusion that no investigation of that company's condition and affairs was made by the Baltimore & Ohio prior to its purchase of the C., H. & D. This conclusion, surprising as it is in view of the fact that the C., H. & D.'s investment in the Pere Marquette was certainly as great as the Baltimore & Ohio's proposed investment in the C., H. & D., was confirmed by Oscar G. Murray who, testifying before this Commission, stated again and again that the interest of the Baltimore & Ohio lay wholly in the C., H. & D., and that that company's affairs alone were looked into. He further stated that the Baltimore & Ohio committee thought it desirable that the C., H. & D. should get rid of the Pere Marquette stock, but insisted that no method of so doing was promised or provided at the time. While, of course, the value of the Pere Marquette stock owned by the

C., H. & D. would be reflected in the price, later to be fixed, at which the Baltimore & Ohio would buy the C., H. & D. stock, it seems remarkable, particularly in view of the Pere Marquette's recent history, that the purchaser was not interested in knowing how much that value would affect the purchase price of the C., H. & D. stock, and the probabilities as to whether that value would increase or diminish after the purchase price was fixed and paid.

There are other features of this report by the committee to the board which are difficult to comprehend. For instance, an annual earning of $60,000 from equipment hire was counted on in the face of a known loss of $39,000 on that account during the preceding six months, and in the face of the warning in the Bulkley report of the inadequacy and worn-out condition of the C., H. & D. equipment. Then, too, a flat tax accrual of $300,000 per annum was counted on for each of the six years, despite the tendency of taxes to increase, and also despite the extensive improvements to the property which the plan proposed. And finally, operating expenses were estimated on a ratio of 75 per cent in 1910 and 1911, and 70 per cent in the remaining four years, while facing actual ratios of 76.43 in 1906, 75.80 in 1907, and 86.16 in 1908, as reported by comptroller Bulkley, not to mention "the constantly increasing operating ratio and taxes" which have for many years been frequently and vigorously urged upon our attention by this and other carriers seeking to justify increased rates.

The committee's estimates were disregarded when final plans were adopted, for thereunder the slender margin of surplus remaining from six years' operations, as estimated by the committee, was more than wiped out by an increase of $1,058,160 in fixed charges for those years, as shown by what follows.

It is evident from reports of progress made by the committee that the chief difficulty encountered in the final negotiations was with the committee representing the holders of the $15,000,000 of collateral trust notes which it was first proposed should be refunded by straight income bonds. The final report of the Baltimore & Ohio committee, outlining the agreements reached with the various parties at interest in the transaction, was rendered at a board meeting on May 25, 1909, which then authorized the proper officers to execute the agreements necessary to carry the acquisition of the C., H. & D. into effect as outlined in the report. Subsequently modifications of the agreements were made and approved at a meeting on July 8 and the entire transaction as finally put through was approved by the Baltimore & Ohio stockholders at a meeting on August 10, 1909, by a vote of 1,534,159 ayes against 50 nays.

The obligations originally to be performed by the Baltimore & Ohio were as follows, all being embodied in a "purchase contract" made under date of July 1, 1909, with J. P. Morgan & Company:

1. The Baltimore & Ohio agreed to purchase from the stockholder (J. P. Morgan & Company) in July, 1916, 74,097 shares of the common stock of the C., H. & D. at a fair and equitable price to be then determined by mutual agreement or by arbitration. The stock and the voting power thereon for seven years from July 1, 1909, was to be transferred to three voting trustees, J. Pierpont Morgan, E. H. Harriman, and Oscar G. Murray (as president of the Baltimore & Ohio), successors to the first and third to be appointed by the stockholder and the Baltimore & Ohio respectively, and successor to the second to be appointed by these two or, in case of disagreement, by a United States circuit judge of the sixth circuit. Seven members of the C., H. & D. board were to be named by the Baltimore & Ohio and six by the stockholder. The Baltimore & Ohio agreed not to permit a sale or other disposition or an incumbrance of the 110,000 shares of the Pere Marquette stock nor a sale, lease, or incumbrance of that company without the consent of the stockholder.

2. The Baltimore & Ohio agreed to execute a "supplemental trust agreement" dated July 1, 1909, with the C., H. & D. and the Central Trust Company of New York, and pursuant thereto to execute its guaranty of the principal and interest on not exceeding $11,557,000 of the purchase money collateral trust 4 per cent gold notes of the C., H. & D. due July 1, 1913.

3. The Baltimore & Ohio agreed to execute its guaranty of the principal and interest of $12,500,000 of the first and refunding mortgage bonds of the C., H. & D. dated July 1, 1909.

4. The stockholder agreed to pay sums equal to so much of the interest on the C., H. & D. general mortgage bonds above 3 per cent as the net earnings of that company in 1917, 1918, and 1919 should fail to provide, such sums to be payable out of and as a deduction from the purchase price of the stock.

5. The stockholder and the Baltimore & Ohio agreed to advance equally the amount necessary to meet any deficiency of the earnings of the C., H. & D. to meet the fixed interest of 1 per cent on the C., H. & D. general mortgage bonds during 1912, 1913, and 1914.

6. The Baltimore & Ohio agreed that during July, 1916 (or during the July next following its acquisition of the C., H. & D. stock, if such acquisition occurred prior to July, 1916), upon demand and presentation of the C., H. & D. general mortgage bonds, it would either (*a*) purchase same at $850 per bond, with interest adjustments, or (*b*) give in exchange for each bond so presented and surrendered the new 4 per cent boud of the C., H. & D. guaranteed by the Baltimore & Ohio as to principal and interest, the option of doing one or the other to lie with the Baltimore & Ohio. These undertakings of the Baltimore & Ohio were conditioned upon its right on any 1st day of July prior to and including July 1, 1916, to call said general mortgage bonds for purpose of exchange for new 4 per cent C., H. & D. bonds guaranteed by the Baltimore & Ohio.

In addition to the foregoing the final plans provided for the issuance by the C., H. & D. of $20,000,000 of new general mortgage bonds on which 4½ per cent interest was to be paid in 1910 to 1916, inclusive, if earned, but fixed interest was required to be paid at the rate of 1 per cent in 1912, 1913, and 1914, 3 per cent in 1915 and 1916, and 4½ per cent thereafter. Of these, $15,000,000 were to be used in

the redemption of a like amount of the matured collateral trust notes, $60 in cash per note of $1,000 being also given, and $5,000,000 were to be used as follows: $1,364,000 to satisfy the debt of the C., H. & D. to the Pere Marquette on account of the award of the arbitrators, $1,272,000 at 85 to redeem sundry outstanding unsecured notes, and the balance for other corporate purposes.

As already stated, the original forecast of the Baltimore & Ohio committee made no allowance for interest on these new general mortgage bonds. Considering only the amount of such bonds as were to be immediately issued, $17,636,000, there was thus added to the fixed interest charges over and above the committee's original estimate $1,058,160 for the six-year period from July 1, 1909 to 1915, thereby more than wiping out the slender surplus of $870,000 estimated by the committee to accumulate in that period.

Another very important feature of the plan as adopted was the guaranty by the Baltimore & Ohio of the principal and interest of $11,557,000 C., H. & D. purchase money collateral trust gold notes, which had been issued under the circumstances already detailed, which were to mature July 1, 1913, and which were to be secured by $13,000,000 of new first and refunding mortgage bonds dated July 1, 1909. This collateral was in substitution of the refunding mortgage bonds of July 1, 1904, so that by this plan the 110,000 shares of Pere Marquette stock became a free asset of the C., H. & D. The record is not clear as to how it was proposed to provide for the redemption of these notes. If it was intended that the collateral should be sold, the Baltimore & Ohio knew that according to its committee's estimate the C., H. & D. would have accumulated a deficit during the intervening four years of $740,420, on which account it would not seem feasible to anticipate a sale at a reasonable price, particularly as the contracts did not provide for any guaranty of the bonds by the Baltimore & Ohio. As a matter of fact, the other block of these same bonds, which, by the plan were to be sold immediately, were discounted 11½ per cent, although they bore the Baltimore & Ohio guaranty of principal and interest. It can hardly be likely that it was expected to find a market for unguaranteed bonds on a record of substantial deficits. Furthermore, if it was the intention to sell the collateral, it seems strange that the committee made no allowance for the increase in interest charges which would come from the inevitable necessity of selling at a discount. The only other alternative is that the Baltimore & Ohio intended from the beginning to assume the burden of redeeming these $11,557,000 of notes, as it in fact did, upon their maturity.

Under these conditions of purchase we find it difficult to understand why the Baltimore & Ohio, even allowing for an increase in

its revenues from prospective increase in interchange of tonnage with the C., H. & D., went ahead with its plans to invest in a property described by its own expert as "bankrupt," and which, far from receiving the "drastic" treatment which he considered necessary, was about to be "reorganized" on a basis which, according to the predictions of the company's own expert committee, would result in a deficit for at least six years. True, no immediate cash outlay would be required of the Baltimore & Ohio, and the price to be paid for the stock would depend on its arbitrable value several years hence. These facts probably had some influence, but certainly could not have disguised the evident deficit in operations; the seriousness of the direct guaranty of principal and interest on some $24,000,000 of bonds; the almost certainty of having to assume the burden of redeeming $11,557,000 of those bonds within four years; and the burden of either redeeming within six years the $17,636,000 of general mortgage bonds at 85, or of guaranteeing new bonds to replace them.

As in the case of the Erie, the menace of acquisition by a rival road was a factor, recorded at least for history's sake; its actual effect can not be determined. The Baltimore & Ohio committee made its favorable recommendation for purchase in view of the showing they had figured out, and also—

in view of the anticipated injurious effect on the Baltimore & Ohio system if this property should be carried by others through this period and then acquired by other railroad interests running to the seaboard.

In this case the rival feared was the Chesapeake & Ohio, with which the committee representing the collateral trust note holders had negotiated, and concerning which Oscar G. Murray testified as follows:

There was, however, I think, upon the part of the committee, a feeling that the property might be acquired by some other road, which would be detrimental to the interests of the Baltimore & Ohio.

What strong financial pressure was exerted on the prospective purchaser is not disclosed by the record, but the road's committee seemingly considered certain advantages to be gained along that line when they stated that—

If purchase is made as now proposed, then for the term of the agreement the Baltimore & Ohio will have as active agents and partners the influential house of J. P. Morgan & Co., making every effort to effectuate a reorganization on the most conservative basis, and endeavoring to increase the revenues of the company to make their stock as valuable as possible.

The plan as finally agreed upon, and approved by the court, allowed the surrender of the property to the Baltimore & Ohio management on August 20, 1909. A majority in the board of directors was filled by nominees of the purchasing company, and changes in

officers immediately followed the change in control. The property and business was returned to the possession and custody of the company, subject to the right of the court, upon its own motion or upon the petition of any party to the cause, to resume possession and control. The receiver was never formally discharged.

Of the new general mortgage bonds, authorized issue $20,000,000, $15,000,000 in par, together with $60 in cash per note of $1,000, were delivered in exchange for $15,000,000 of the 4½ per cent collateral trust notes and all unpaid coupons thereon; $1,364,000 in par were delivered to the Pere Marquette in satisfaction of the Harmon-Crapo arbitration award; and $1,272,000 in par were delivered at 85, together with $4,237.24 in cash, to redeem sundry call loans amounting to $892,624.79 and accrued interest thereon of $192,812.45. The collateral trust notes thus redeemed were represented in the company's assets, as previously explained, partly by stock of the Pere Marquette and partly by 5 per cent preferred stock of the C., H. & D. purchased for retirement. The arbitrators' award did not specify the particular claims which were allowed in determining the amount awarded, but from the nature of the claims rehearsed in that award it seems plain that no permanent property was secured to the C., H. & D. by satisfaction of the award through issuance of $1,364,000 of its general mortgage bonds to the Pere Marquette. As to the notes redeemed it seems quite likely, in view of the large deficits accumulated at the time, that these $892,624.79 of notes were not represented at all in the property investment of the C., H. & D., but the accounts do not permit the determination of the actual facts in such cases.

Turning now to the first and refunding mortgage bonds, the record shows that $13,000,000 in par thereof, not guaranteed, were at once deposited as collateral to the $11,557,000 of C., H. & D. purchase money collateral trust gold notes dated January 1, 1908: $1,677,000 in par, also not guaranteed, together with $4,880.40 of accrued interest thereon and $2,589.60 in cash were used at 89 to redeem sundry notes amounting to $1,500,000; and $7,500,000 in par, guaranteed by the Baltimore & Ohio, were sold for cash at 88½ and interest. The proceeds of this $7,500,000 went into the general funds, from which there was paid a note of $5,000,000, plus $64,583.33, interest thereon, to Morgan & Company for their loan made to carry out the reorganization plans. Here, also, it is not possible to state how much, if any, of the proceeds of the $1,500,000 of sundry notes redeemed was represented in the property investment of the C., H. & D., and the same is true of a part of the proceeds from the $7,500,000 of new bonds last mentioned. The "reorganization loan," however, was handled in a special account. In addition to the $5,000,000 received from J. P. Morgan & Company that account was

credited with $244,101.05 of net proceeds from the sale of $250,000 in par of treasury purchase money collateral trust gold notes and $1,682.62 of bank interest, making aggregate credits of $5,245,783.67, which was disbursed at various times for the following purposes:

Redemption of receiver's certificates	$851, 830. 00
Redemption of receiver's call loans	500, 000. 00
Partial payments of principal of various notes	9, 422. 93
Matured interest on C., H. & D. funded debt	1, 377, 834. 27
Interest on receiver's and other loans	20, 885. 89
Interest on matured coupons to date of settlement	44, 190. 88
Commissions for paying coupons	2, 540. 02
Interest payable by C., H. & D. on terminal company bonds	54, 000. 00
Services of trustees and other expenses in connection with the issuance of securities and settlement of notes, etc	30, 372. 87
Payment of material claims, etc	927, 845. 57
Payments in connection with recovery of Ashland & Ironton bridge and related properties	329, 824. 70
Cash payment of $60 with each general mortgage bond exchanged for 4½ per cent collateral trust gold note, matured Sept. 1, 1908	900, 000. 00
Part of compensation and expenses of committee representing holders of collateral trust gold notes	100, 000. 00
Services and expenses of committee representing holders of Cincinnati, Findlay & Fort Wayne bonds	14, 000. 00
Payment to Frank O. Loveland for services as special master	5, 500. 00
Payment to Geo. F. Brownell for legal services, in full, Sept., 1905, to Oct., 1909	10, 000. 00
Payment to F. W. Stevens for legal services, in full, to Apr. 1, 1909	15, 000. 00
Rental of Huffman Basin, Dayton, Ohio, for period prior to receivership	15, 904. 98
Taxes	86, 021. 17
Miscellaneous items	610. 44
Total	5, 245, 783. 67

Payments such as the above are common to most reorganizations. Particularly is this so in cases like the present, where the stock owning and junior security interests, in order to sacrifice as little as possible themselves, are compelled to call upon the prior creditors for still less sacrifice. In this as in many railroad reorganizations, reliance was seemingly placed upon future prosperity to support not only the securities defaulted on in the past, but additional securities issued to care for the defaulted interest, for heavy reorganization expenses, and for other concessions made to avoid foreclosure. In the Pere Marquette reorganization plan proposed on October 30, 1916, the estimated cash requirements aggregating $16,000,000 included over $2,500,000 on account of reorganization expenses, committees' expenses, and commissions.

The funding of interest is not completely revealed in the foregoing statements. The record otherwise shows that all of the $851,830 of receiver's certificates redeemed had been issued to pay bond interest. In addition, it is altogether likely, in view of the annual operating

deficits during the receiver's operation, that the $500,000 of his call loans had been made to keep up payments of interest on underlying bonds, although the record does not conclusively show this to be a fact. Mention has already been made of the use of some of the new general mortgage bonds to redeem notes and $192,812.45 of accumulated interest thereon; so that, leaving out of consideration the principal of notes which may or may not have been issued to pay interest, there is definitely shown to have been about two and a half million dollars of interest funded in these two new issues of C., H. & D. bonds. This sum we do not doubt would be largely increased if the facts could be determined as to the use made of proceeds of the notes also redeemed by these bonds.

The burdens put on the C., H. & D. in the shape of payments of reorganization expenses were exceedingly heavy. Such charges aggregated about $650,000. Some were paid wholly or in part from the proceeds of first and refunding bonds, and are thus shown in the preceding list; the balance was paid largely from a loan of $500,000 made on August 14, 1909, by Morgan & Company which as late as June 30, 1916, was still unpaid. Besides legal fees and expenses, there were two principal classes of expenses represented in the $650,000; one, the trustees' fees and expenses in connection with the bonds and notes, aggregating some $85,000, and the other the payments made on account of bondholders' committees and like expenditures, about $325,000. There was one item included in the latter class which deserves particular attention, namely, $229,002.89 paid to the committee representing the holders of the $15,000,000 of 3½-year collateral trust notes. The books of the C., H. & D. do not show any details of this large expenditure, but according to the record before us it was disbursed as follows:

To J. N. Wallace	$24,500.00	fee as member of the committee.
To H. S. Redmond	24,500.00	fee as member of the committee.
To Harry Bronner	24,500.00	fee as member of the committee.
To F. S. Smithers	24,500.00	fee as member of the committee.
To J. H. McClement	24,500.00	fee as member of the committee.
To J. H. McClement	10,000.00	fee for additional services.
To Central Trust Co. of New York	25,000.00	fee for services to committee.
To Joline, Larkin & Rathbone	49,500.00	fee for legal services and charges of counsel retained by them.
To F. S. Randall	2,000.00	fee for secretarial services.
To F. L. Babcock	2,000.00	fee for secretarial services.
To Wm. D. Guthrie	2,000.00	fee for services.
To Hallgarten & Co	2,500.00	fee for services rendered and disbursements incurred by Swiss Bank Verein.
To sundry parties	3,481.25	for advertising.
To Central Trust Co	1,079.00	for interest on loans.
To sundry parties	8,942.64	for miscellaneous expenses.
Total	229,002.89	

These services were rendered, not to the carrier, but to creditors of the carrier. They were paid for by the carrier out of borrowed money, and its heavy interest-bearing debt was thereby increased. No consideration appears to have been shown for its burdened financial condition in fixing these munificent fees. There is also a touch of the ironical in the fact that the note holders served by this costly array of committeemen, counsel, and trustees, at the expense of their debtor, were constrained as the outcome of that service to relinquish interest for 3 years and 10 months up to July 1, 1909, on their 4½ per cent notes, and to accept for each of their notes, principal $1,000, the sum of $60 in cash, and a general mortgage bond, principal $1,000, which called for a further sacrifice of 4½ per cent interest for two years, of 3½ per cent for the following three years, and of 1½ per cent for the next following two years, in case the road failed to earn those sums.

Before leaving this subject there is one further agreement to mention, one by which the C., H. & D. minority stockholders were cared for. This was dated July 1, 1909, and was entered into by the Baltimore & Ohio with such of the holders of the C., H. & D. common stock as should deposit such stock thereunder before September 10, 1909, later extended to February 1, 1910. The Baltimore & Ohio agreed to pay the same price for such stock as would be fixed for the stock to be purchased from J. P. Morgan & Company. Under this agreement some 5,200 shares of stock have been deposited, thus involving the Baltimore & Ohio in a purchase of practically all of the 80,000 shares of common.

IX. PERIOD OF CONTROL BY BALTIMORE & OHIO, FROM 1909.

We now come to a consideration of the results to the C., H. & D. from its management by the Baltimore & Ohio which began with the fiscal year of 1910, or on August 18, 1909, to be precise. There is here inserted a comparative annual income statement to June 30, 1914:

Item.	Year ended June 30, 1910.	Year ended June 30, 1911.	Year ended June 30, 1912.	Year ended June 30, 1913.	Year ended June 30, 1914.	Total, 1910–1914.
Railway						
Rail	$9,446,594.21	$9,670,281.69	$9,825,320.62	$10,071,298.54	$10,084,217.04	$48,997,640.10
Rail	7,587,296.51	7,398,588.60	7,317,252.51	8,061,989.96	9,737,841.33	40,102,968.91
Net revenue rail operations	1,859,227.70	2,171,693.09	2,508,068.11	2,009,308.58	346,375.71	8,894,671.19
Net deficit auxiliary operations						
Net railway operating revenues	1,859,227.70	2,171,693.09	2,508,068.11	2,009,308.58	346,375.71	8,894,671.19
Railway tax accruals	308,761.51	378,976.73	397,674.67	430,419.19	464,608.61	1,980,440.71
Railway operating income	1,550,466.19	1,792,716.36	2,110,393.44	1,578,887.39	*Dr. 118,232.90*	6,914,230.48
Other income:						
lance						
	25,599.18	38,391.42	69,627.33	74,515.55	85,992.10	294,125.58
	1,535.09	952.52	1,764.39	7,520.56	11,119.61	22,892.17
	52,529.50	64,326.04	102,527.00	91,899.00	90,012.50	391,294.04
ies	1,500.00	1,500.00	1,500.00	1,500.0	1,500.00	7,500.00
Income from unfunded securities and accounts	35,731.07	36,615.75	30,089.72	31,899.8	23,868.31	158,204.58
Miscellaneous income			139.51	102.0		241.51
Total other income	116,894.84	131,785.73	205,647.95	207,436.94	212,492.42	874,257.88
Gross income	1,667,361.03	1,924,502.09	2,316,041.39	1,786,324.33	94,259.52	7,788,488.36
Ded						
	326,127.92	319,307.93	310,728.25	310,728.25	310,728.25	1,577,620.60
	106,427.80	104,781.08	189,863.38	614,532.34	984,665.85	1,999,270.28
	152,890.14	128,972.58	162,574.09	155,577.10	165,742.58	765,756.49
	409,496.91	407,720.97	404,054.70	404,390.56	403,126.29	2,028,789.43
	1,278,939.08	1,590,015.21	1,841,681.41	1,883,867.57	1,551,912.23	8,146,415.49
bt	113,742.59	34,750.23	26,026.34	30,294.89	492,574.69	697,388.94
Total deductions	2,387,624.24	2,585,548.00	2,933,926.15	3,429,390.71	3,908,751.08	15,245,242.18
Net loss	*720,263.21*	*661,045.91*	*617,886.76*	*1,643,066.38*	*3,814,491.56*	*7,456,753.82*
Mileage operated (single track) on June 30	1,036.05	1,014.60	1,014.60	1,014.60	1,015.27	

Lest there be misunderstanding on that point it should be said that the results in 1913 and 1914 are due in part to extraordinary circumstances incident to floods in the spring of 1913. This will be considered at length later on.

It will be noted that the Baltimore & Ohio committee's estimate of $558,000 deficit for 1910 was exceeded by the actual results—$720,263.21 being the amount of the year's fixed charges which the earnings failed to provide. One of the features of the readjustment plans was that $5,000,000 in par of the new first and refunding mortgage bonds bearing the Baltimore & Ohio guaranty were to be sold at once to be used for improvements and betterments. The bankers failed to exercise their option on these bonds, however, and before the first year was out the Baltimore & Ohio found it necessary to advance $550,000 in order to enable the C., H. & D. to carry on construction work already begun. First and refunding bonds were accepted as collateral at a price of 80, the Baltimore & Ohio board approving the transaction on July 14, 1910, and voting authority for loans up to $2,550,000. Another important transaction at the close of this first year was the purchase of some $2,897,630 worth of new equipment. Of this amount $577,630 was paid in cash and the balance covered by 5 per cent equipment notes. This, of course, increased the fixed charges of the company and with the interest on Baltimore & Ohio loans produced a total interest burden for the second year of the Baltimore & Ohio control which was only $309,000 under the annual interest charges on the property before the readjustment was undertaken.

1. *Sale by C., H. & D. of Pere Marquette stock.*—Early in 1911 it became apparent that the Pere Marquette was again in serious financial distress. It had been operated at a deficit of over $600,000 during the first seven months of the fiscal year to June 30, 1911, and its cash requirements for the remainder of the calendar year 1911 were estimated at about $3,300,000, not taking into account the necessary renewal at various times before December 31, 1911, of notes aggregating $2,350,000. The company's credit was exhausted, so the matter was brought to the attention of the C., H. & D. and Baltimore & Ohio managements on account of the large holding of Pere Marquette stock by the C., H. & D.

Investigation by the Baltimore & Ohio led it to the conclusion that its interests in the Pere Marquette "were too remote to justify that company (the Baltimore & Ohio) in making such advances" either directly or indirectly through the C., H. & D. To appreciate the change of front involved in that statement we need only turn back some two years to negotiations for the sale of the C., H. & D.

to the Baltimore & Ohio where control of the Pere Marquette is given prominence by both seller and buyer as a "reason." Of course, the failure of the C., H. & D. to earn its own fixed charges rendered it incapable of itself lending any assistance. It was, therefore, decided to endeavor to sell the Pere Marquette stock, and negotiations along that line resulted in a sale at $23 per share to J. P. Morgan & Company, the latter agreeing also to render financial assistance to the Pere Marquette. The sale was under an agreement dated February 27, 1911, which was approved by the C., H. & D. board at a meeting on that day and by the stockholders on October 10, 1911, not specifically, however, but through a blanket vote approving all acts of the directors and executive committee during the year. Under the terms of the agreement the C., H. & D. was to bear all expense incident to securing the release of the stock, was to pay the New York transfer tax, and was to save the purchaser harmless from all claims against the stock. The purchase price was to be payable on December 1, 1916, without interest, and less all indebtedness then due or owing the purchaser by the C., H. & D.

As has hereinbefore been stated, this Pere Marquette stock had been included in and never released from the sale contract of April 6, 1905, made by the C., H. & D. with the Michigan Securities Company. The necessity of obtaining such a release in order to consummate this sale to Morgan & Company was seemingly overlooked at the time, for it was not until June 8, 1911, that a release was undertaken and effected.

It will be recalled that the C., H. & D. bought this stock at the price of $125 per share and issued $13,750,000 of securities in payment therefor, so that its sale at 23 resulted in a loss of $11,220,000. This constitutes the largest single item in its book deficit of $29,878,658.83 accumulated to June 30, 1914. In addition it paid $312,500 cash commissions to F. H. Prince & Company for alleged services in connection with the purchase, and, of course, was put to other expense in issuing its securities and in collateral transactions. It has thus suffered a direct loss of well on toward $12,000,000. Furthermore, the C., H. & D. no longer has any rights even in the purchase price of $23 per share, payable December 1, 1916, by J. P. Morgan & Company to the C., H. & D., for under the terms of an agreement dated June 13, 1912, said rights, together with various securities, were transferred to the Baltimore & Ohio as part of the collateral security for sundry cash loans.

2. *Modification of C., H. & D. stock purchase contract.*—Conditioned upon this sale of Pere Marquette stock to J. P. Morgan &

Company, there was executed an agreement, dated February 27, 1911, supplemental to the original purchase agreement between that firm and the Baltimore & Ohio covering the sale of the C., H. & D. stock. By this first supplemental agreement a minimum price of $34.144 plus per share and a maximum price of $100 per share was fixed for the 74,097 shares to be bought from the Morgan firm, between which limits the price was to be fixed according to their original agreement. This minimum price was one deduced by dividing the amount to be paid by Morgan & Company for the Pere Marquette stock, $2,530,000, by the number of shares of C., H. & D. stock sold by that firm to the Baltimore & Ohio.

3. *Operating losses in 1911 and 1912.*—Reference to the statement at page 199 herein shows that for the fiscal year to June 30, 1911, the C., H. & D. failed by $661,045.91 to earn its fixed charges, and that the corresponding deficit the following year was $617,886.76. The Baltimore & Ohio committee had estimated that the results would be a deficit of $413,000 in 1911 and a profit of $245,600 in 1912. Contributing to this failure of expectations, there may be noted the following: Gross revenues for 1911 and 1912 were $9,570,000 and $9,825,000, respectively, against the $9,540,000 and $10,112,000 estimated by the committee; the operating ratios were 77.31 and 74.47 per cent, against estimated ratios of 75 and 70 per cent, respectively; taxes were $378,977 and $397,675, instead of $300,000 for each year as estimated; and, even with the new equipment purchased in 1910 there were debit balances for hire of equipment reaching $104,781 and $188,863, respectively, instead of credit balances as estimated. It is also worthy of note that in 1912 the total interest charges were only $66,000 less than for the year immediately preceding the assumption of control by the Baltimore & Ohio.

4. *Further modification of C., H. & D. stock purchase contracts.*—The original contract covering the purchase of the C., H. & D. stock was again modified by a supplemental agreement dated October 21, 1912, approved by the Baltimore & Ohio board of directors on October 31, 1912, apparently without previous consideration or authorization of negotiations. The sum payable by the Baltimore & Ohio for the C., H. & D. stock was conditioned on the payment by Morgan & Company of the before-mentioned contracted price, $2,530,000, for the 110,000 shares of Pere Marquette stock and was fixed, both as to maximum and minimum, at that same amount, payable unconditionally on December 1, 1916, plus an additional sum of $740,970 payable on the same date, but dependent on whether or not the C., H. & D. should be compelled to make good its guaranty of $9,207,000 of Pere Marquette bonds, or should be forced into a

receivership on that account. In this supplemental agreement the parties each discharged the other from any liability to advance equally any sums necessary to make up a shortage of C., H. & D. earnings to meet the 1 per cent interest charges on its general mortgage bonds in 1912, 1913, and 1914; it also relieved J. P. Morgan & Company from its obligation to pay a sum equal to so much of the interest above 3 per cent per annum for the fiscal years ended June 30, 1917, 1918, and 1919, on the C., H. & D. general mortgage bonds, as the net earnings of that company for those years should not suffice to pay.

Oscar G. Murray, president of the Baltimore & Ohio in 1909, testified that at the time the C., H. & D. purchase was made he was not informed as to that company's guaranty of the $9,207,000 of Pere Marquette bonds referred to in this agreement. The subject was not covered in Major Bulkley's report, but the record before us shows that Major Bulkley had been fully informed of the guaranty by comptroller Cramer, of the C., H. & D. It also appears that facts respecting the guaranty had previously been given in financial publications.

5. *Flood damages in 1913.*—In considering the results for 1913 and 1914 as given in the statement at page 199, allowance must be made for the extraordinary expense and temporary loss of business resulting from the floods in Ohio and Indiana in the spring of 1913. These caused the loss to the C., H. & D. of nine bridges, three of which were over large rivers, of 61 miles of track, of station buildings, and of other property, and the practical suspension of traffic for several months. A receivership for the property was not sought. The Baltimore & Ohio at once joined operating forces with the C., H. & D. in the reconstruction of the line and the restoration of the facilities. All of the replacements with permanent structures had not even yet been put in when testimony on this subject was taken in May, 1916, but up to June 30, 1914, a direct outlay of $1,277,933.18 had been made on account of flood damages. Of this $176,941.62 represented additions to and betterments of the property chargeable to property; the balance has been charged to operating expenses, $25,000 in 1913 and $1,075,991.56 in 1914. To that extent certainly the deficits of those years must be considered due to abnormal conditions; what additional abnormality resulted from loss in gross revenues is, of course, a matter of conjecture only.

6. *Cash advances by Baltimore & Ohio.*—Funds to pay these flood damages were all advanced by the Baltimore & Ohio. The flood advances, together with others made by the Baltimore & Ohio from

time to time for various purposes ever since 1910, aggregated $10,488,737.52 up to June 30, 1914, as shown in the following table:

Year ended June 30—	For construction.	For deficit in income, etc.	For maturing equipment obligations.	For flood expenditures.	Total.
1910	$550,000.00				$550,000.00
1911	2,449,000.00	$203,223.34	$496,776.66		3,149,000.00
1912	425,000.00	631,488.34	480,776.66		1,537,265.00
1913	265,000.00	1,129,223.34	470,776.66	$400,000.00	2,265,000.00
1914	300,000.00	1,420,575.91	466,896.61	800,000.00	2,987,472.52
Total	3,989,000.00	3,384,510.93	1,915,226.59	1,200,000.00	10,488,737.52

At a meeting on May 29, 1913, the finance committee of the Baltimore & Ohio referred to the president the matter of ascertaining what arrangements could be made to secure an extension of the $11,557,000 of C., H. & D. notes falling due on July 1 following, and which, as previously explained, had been indorsed by the Baltimore & Ohio with its guaranty of principal and interest. He reported at a meeting on June 10 that it was impossible to arrange for such an extension and recommended that the company issue its one-year 5 per cent secured notes to provide for the retirement of the C., H. & D. notes and for other financial requirements of the Baltimore & Ohio. The committee approved this recommendation, and it was formally approved by the executive committee and by the board on June 19, 1913. These meetings also voted authority for the payment by the Baltimore & Ohio of the principal and interest on said C., H. & D. notes, the latter having given notice of its inability so to do. All this entailed an additional cash outlay by the Baltimore & Ohio of $11,788,140.

On December 11, 1913, the Baltimore & Ohio board appointed Edward R. Bacon, L. F. Loree, Robert S. Lovett, and president Willard, ex officio, as a committee to consider and report on the C., H. & D. relations to the Baltimore & Ohio. At a meeting of the board on June 11, 1914, Bacon made an oral report in which he referred to the statement filed by president Willard in *The Five Per Cent Case*, *supra*, and called particular attention to the changes which had come about since execution of the purchase agreement of July, 1909, such as large increases in rates of pay, taxes, and other expenses which had operated not only to make impossible of realization the estimate of net earnings made in 1909 but, through their effect on the Pere Marquette—

had greatly reduced the value of the stock of that company which had been looked upon as a substantial asset in the treasury of the Cincinnati, Hamilton & Dayton.

There followed a recital of the results of operation to date, the heavy expenditures on account of the flood of 1913, and a statement of the advances made by the Baltimore & Ohio, aggregating over $21,000,000. Mention was made of the deficiency of equipment on the C., H. & D., to remedy which, and the then serious charges for hire of foreign equipment, would require very considerable sums. These matters and the poor earnings on many of the branches and the low rates in that territory brought the committee to the conclusion that the Baltimore & Ohio could no longer advance funds to take care of the C., H. & D.'s many necessities. The special committee was then discharged and its duties given to the executive committee. The board then authorized the president, with the approval of the executive committee, to make such loans to the C., H. & D. to meet its obligations maturing July 1, 1914, as said committee might deem it advisable to make.

At this point it will be helpful to consider in a general way the results of the financing and operations of the C., H. & D. from its organization in 1895 up to June 30, 1914. In Appendix 5 there is presented a statement for that period which contains the principal items of the general balance sheet and also a consolidated statement of income and profit and loss accounts. The following recapitulation of an analysis of the company's profit and loss account shows the principal items going to make up the $36,068,145.29 of net losses, almost all of which accumulated in the period since July 1, 1904. This should be read in connection with the detailed recital in the report of the events here summarized.

Recapitulation of an analysis of profit and loss account covering the period, July 1, 1895, to June 30, 1914, inclusive.

Item.	Debit.	Credit.
Income account balances transferred—1896 to 1914	$13,405,262.05	$2,360,003.50
Loss through sale of $11,000,000 Pere Marquette R. R. common stock, bought at 125, sold at 23	11,220,000.00	....
Expenses acquiring Pere Marquette R. R. common stock [1]	901,707.36	....
Stock transfer tax on Pere Marquette R. R. common stock	2,200.00	....
Expense of suit of Chas. A. Bruce and Corporate Organization and Audit Co. v. C., H. & D. for Prince's additional commissions	11,455.66	....
Expenses retiring Cincinnati, Hamilton & Dayton Ry. Co. 5 per cent preferred stock (par value $6,676,925) [1]	1,265,876.29	....
Premium of $22 per share paid in retiring $6,676,925 Cincinnati, Hamilton & Dayton Ry. Co. 5 per cent preferred stock	1,468,918.62	....
Expenses retiring Cincinnati, Hamilton & Dayton Ry. Co. 4 per cent preferred stock (par value $1,074,500) [1]	33,414.13	....
Award to Pere Marquette R. R. Co. Apr. 30, 1908, by Harmon-Crapo arbitration of claims of C., H. & D. Ry. and P. M. R. R. against each other, in matters growing out of lease (Mar. 1, 1905) of latter by former	1,364,000.00	....
Cancellation of sundry advances to and bills against the Chicago, Cincinnati & Louisville R. R. Co. in consequence of "agreement and release" of Feb. 1, 1907 (Bradford settlement)	467,831.29	....
Sundry expenditures in connection with the readjustment of the finances of Cincinnati, Hamilton & Dayton Ry. Co. in 1909	650,032.18	....
Direct charges to profit and loss account, of discount, commissions, expenses, etc., in connection with issuance and extension of securities	1,736,422.50	....

[1] The carrier's accounting records group and designate these items as here shown, but analyses of those accounts show that they contain sums not properly so classifiable, among which are items purposely omitted from the 1905 income account, as explained in the section beginning at page 155.

Recapitulation of an analysis of profit and loss account covering the period, July 1, 1895, to June 30, 1914, inclusive—Continued.

X. C., H. & D. SECOND RECEIVERSHIP, 1914.

Obviously a second receivership of the C., H. & D. had been inevitable for some time. On July 2, 1914, a bill praying for such receivership was filed in the district court of the United States for the southern district of Ohio, western division, based on default of interest due July 1 on first and refunding mortgage bonds and on certain bonds of subsidiary companies. On that day the court appointed Judson Harmon and Rufus B. Smith as receivers, and they immediately assumed control. For the year following, an income account on substantially the same mileage as that given for 1914 in the statement at page 199 shows a deficit of $3,093,185.58, including a full accrual of interest on bonds, whether defaulted or not.

Foreclosure proceedings, begun by the trustees of the mortgages securing the bonds of the Cincinnati, Indianapolis & Western Railway Company, resulted in a sale of its properties in September, 1915, being the lines from Hamilton, Ohio, to Springfield, Ill., and from Sidell to West Liberty, Ill., aggregating some 360 miles owned. Two new companies were incorporated to take over the foreclosed lines, one, the Cincinnati, Indianapolis & Western Railroad Company, acquiring the line from Hamilton to Springfield, and the other, the Sidell & Olney Railroad Company, acquiring the line from Sidell to West Liberty, and continuing the trackage right operation from West Liberty to Olney. The result is that the C., H. & D.'s stock-owning interest in that former subsidiary has been entirely wiped out, and its book asset of $2,308,252.52 representing the same must now be written off.

XI. REORGANIZATION PLANS FOR C., H. & D., 1916.

On July 8, 1915, following a statement by president Willard as to C., H. & D. affairs, the board of the Baltimore & Ohio passed resolutions, the preamble to which stated that through the enforcement of divisional liens the C., H. & D. system was in process of disintegration, the security of all interested was thereby being impaired, and that counsel advised, on account of conditions then existing and likely to exist on July 1, 1916, that there was serious question as to the legal validity and effect of the agreements entered into by the Baltimore & Ohio in 1909 with respect to the C., H. & D. general mortgage bonds, litigation concerning which could be avoided only by the cooperation of those interested. The resolution provided that the company should cooperate in carrying through a plan for the reorganization of C., H. & D. affairs, and authorized the president to take such action as he might find most advisable in that connection.

The next step came on September 16, 1915. President Willard then outlined to the board a proposed plan of reorganization of the C., H. & D. and the same was approved, authority to take the necessary steps to carry out a plan being then voted the president and a special committee constituted of Edward R. Bacon, L. F. Loree, Charles A. Peabody, and the president ex officio. There resulted a draft of a plan of reorganization dated November 15, 1915, which was submitted to and approved by the board on November 24, together with a draft of a letter to Kuhn, Loeb & Company whereby they were to become reorganization managers. One feature of these arrangements was that, irrespective of the consummation of the plan, the Baltimore & Ohio became bound to purchase C., H. & D. general mortgage bonds at $700 per bond, with interest at 4 per cent from January 1, 1916, provided only that the number of said bonds as fixed by the reorganization managers should first be deposited for such purchase.

The president reported to a board meeting on March 29, 1916, that of the $17,529,000 of said bonds outstanding over 87 per cent had been purchased; also, that an agreement had been concluded with a committee representing over 70 per cent of the $3,500,000 Cincinnati, Dayton & Ironton 5 per cent bonds under which that committee was to recommend the acceptance for those bonds of 60 per cent of their face value in proposed Baltimore & Ohio divisional 4 per cent bonds. These accomplishments had enabled the promulgation of a reorganization plan which would cover the main line of the C., H. & D. from Cincinnati to Toledo, the main-line branches, and the line from Dayton to Wellston, a total of some 368 miles, comprising the more important portions of the system and those which could best be operated to mutual advantage in conjunction with the Balti-

more & Ohio. It had been found advisable to amend and modify the original plan of November 15, 1915, and a new and final plan and agreement of reorganization dated February 15, 1916, was presented to the board at this meeting and by it ratified and approved.

By notice dated April 7, 1916, this final plan was declared operative by Kuhn, Loeb & Company as reorganization managers. Certain of its features, dependent upon later decisions, are not stated explicitly in the original document, but a general statement of its terms follows.

The plan contemplates the organization of a new company to take over the leasehold of the Dayton & Michigan, from Dayton to Toledo, 141 miles, and the following sections of road owned by the present company, all in Ohio, namely, the main line from Cincinnati to Dayton; the main-line branches from Tontogany to North Baltimore, from Deshler to Findlay, and from Hamilton to Middletown; the line from Piqua to Troy; and that part of the Dayton-Wellston branch between Dayton and Ironton Junction, with such additional portion as the managers may determine. Including the leasehold this will make a total mileage of about 368 miles, which is to be operated as an integral portion of the Baltimore & Ohio system.

All of the securities of the new company are to be turned over to the Baltimore & Ohio, such securities consisting of stock, refunding mortgage bonds, and adjustment and improvement mortgage bonds, the latter being secured on the same property as the refunding bonds but subordinate thereto. The new company will assume the $2,000,000 second mortgage 4½ per cent bonds, now first mortgage, and $3,000,000 of the 5 per cent general mortgage bonds of the old C., H. & D. R. R. The securities of the Dayton & Michigan, consisting of $2,728,000 of 4½ per cent consolidated mortgage bonds and $1,211,250 of preferred and $2,396,950 of common stocks on which 8 per cent and 3½ per cent dividends, respectively, are guaranteed under the lease, will not be disturbed. The amounts of stock and adjustment and improvement bonds are not fixed in the plan, and the same is true as to the refunding bonds, save that the latter are required always to equal in amount the new Baltimore & Ohio bonds under which they are to be pledged.

The Baltimore & Ohio is to issue as its own direct obligation a new series, described in the plan as Toledo-Cincinnati division bonds, which are to mature in 1959, to bear interest at 4 per cent, and to be redeemable in whole or in part at 102½ and accrued interest on any semiannual interest date. The total authorized issue is not to exceed $35,000,000 and it is intended that ultimately they shall be secured by a direct lien on the owned mileage and equipment and upon the leasehold of the new company and in the meantime will be

secured by the pledge of all the new company's refunding bonds, the security for which is yet to be determined. Of these $35,000,000 of Toledo-Cincinnati division bonds $18,749,550 in par are to be reserved to retire the bonds remaining undisturbed under the plan and to provide for equipment, additions and betterments, and additional property, etc. The remaining $16,250,450 are all to be presently issued. Of these $5,000,000 are to be purchased by Kuhn, Loeb & Company and the proceeds used to provide for maturing equipment obligations, for the purchase of new equipment, for additions and betterments, and for other corporate requirements of the new company save in so far as such proceeds are applied in the payment of receivers' obligations, court charges, legal expenses, and reorganization expenses. The balance, $11,250,450, is to be used in refunding outstanding securities as follows:

$7,500,000 to retire at par $7,500,000 C., H. & D. first and refunding 4 per cent bonds guaranteed by Baltimore & Ohio.

$1,425,450 to retire at 85 $1,677,000 of same bonds not guaranteed by Baltimore & Ohio.

$2,100,000 to retire at 60 $3,500,000 Cincinnati, Dayton & Ironton 5 per cent first mortgage bonds.

$225,000 to retire at par $225,000 Piqua & Troy Branch 4 per cent first mortgage bonds.

The plan provides also for a cash payment of $10 on each guaranteed C., H. & D. first and refunding 4 per cent bond retired, to cover expenses of holders.

In addition to putting out its Toledo-Cincinnati division bonds as just described, the Baltimore & Ohio is obligated under the plan to provide the funds to redeem at 70 plus interest from January 1 to 12, 1916, at 4 per cent, the $17,529,000 of general mortgage bonds of the C., H. & D. which have been described in connection with the readjustment of that road in 1909. This would call for a cash outlay of about $12,285,375, which, with $22,695,143 of cash advanced to or for the C., H. & D. to July 1, 1915, would make a cash outlay of nearly $35,000,000. This does not include interest on such advances, and that item would amount to about $2,706,000 to January 1, 1916, and $3,274,000 to July 1, 1916, computed on a 5 per cent basis. Whether or not this interest will be entirely lost does not appear; certainly no provision for its satisfaction in any form is specifically made in the plan.

In addition to issuing its new bonds and providing the twelve and a quarter millions of dollars in cash the plan requires that the Baltimore & Ohio shall surrender the purchase money notes and other obligations of the old company representing the $22,695,143 of cash previously advanced, and shall also surrender all of the collateral

securing those advances except certain thereof, which are to be retained, estimated in value at $3,368,000 as indicated in the following:

			Estimated value.
Obligation of J. P. Morgan & Co. account of Pere Marquette stock		$2,580,000	
Less—			
Demand note in their favor	$500,000		
Advance account general mortgage interest	87,735		
Interest estimated to July 1, 1916	74,465		
		662,200	
			$1,867,800
7,501 shares Southwestern Construction Company stock		750,100	
Estimated at			1,500,200
5 shares of same, some question as to ownership		500	
			3,368,000

XII. BALTIMORE & OHIO POSITION SUMMARIZED.

One of the considerations moving the Baltimore & Ohio management in 1909 to the purchase of the C., H. & D. was a desire to add to the Baltimore & Ohio system a north and south line as a connecting feeder between its northern and southern east-and-west lines to Chicago and St. Louis, respectively. Those lines then had no such connection west of the Newark-Chicago Junction line. A somewhat general idea of the value of the C., H. & D. to the Baltimore & Ohio from that standpoint can be gained from the following comparative interchange statement prepared from the records of the latter:

Calendar year.	Traffic received by B. & O. from C., H. & D.		Traffic delivered by B. & O. to C., H. & D.		Total.	
	Tons.	B. & O. revenue.	Tons	B. & O. revenue.	Tons.	B. & O. revenue.
1909	217,194	$369,465	765,603	$804,076	982,797	$1,173,541
1910	326,291	546,436	1,066,035	1,007,541	1,392,326	1,553,977
1911	430,414	726,825	1,216,587	1,076,855	1,647,001	1,803,680
1912	631,761	885,930	1,925,264	1,630,328	2,557,025	2,516,258
1913	1,129,951	1,123,242	2,001,540	1,803,529	3,131,491	2,926,771
1914	919,298	1,038,751	1,627,454	1,586,674	2,546,752	2,625,425
1915	1,552,653	1,392,568	1,565,380	1,567,602	3,118,033	2,960,170

Of course an estimate can not be made of the amount of traffic really gained through the purchase of control, or of the actual value to the Baltimore & Ohio of this increased interchange. Attention is called to the Baltimore & Ohio committee's estimate in 1909 that the profit from such increased revenue would be 50 per cent of the gross. It should be borne in mind that new interchange relations frequently disturb the old to such an extent as to cause retaliation by other lines, formerly the favored connections. The benefits accruing to the Baltimore & Ohio through its purchase of control would seem

to be confined to net increase in interchange, and to keeping the property from falling into the hands of a rival carrier. These considerations become negligible when the cost to the Baltimore & Ohio of the entire undertaking is considered.

From the standpoint of actual and anticipated outlay the cost to the Baltimore & Ohio of its investment in the C., H. & D. will be about as follows, if the $16,250,450 of new Baltimore & Ohio Toledo-Cincinnati division bonds are considered an obligation of the proposed new company, and that appears to be the ultimate form they will take as contemplated in the reorganization plan. To the advances of $22,695,143 to June 30, 1915, as already mentioned, there has been added in the year ended June 30, 1916, $11,235,988, including sums used for the redemption of part of the C., H. & D. general mortgage bonds of 1909. These make the actual expenditures to June 30, 1916, $33,931,131, to which anticipated additional payments of $5,329,700 are to be added as follows:

Acquisition of remaining outstanding general mortgage bonds of 1909	$1,309,700
Settlements with branch-line bondholders[1]	1,311,870
Payment to J. P. Morgan & Co. for C., H. & D. common stock	2,530,000
Payments to minority stockholders	178,130
Total	5,329,700

The aggregate actual and anticipated expenditures will, therefore, be about $39,260,831, for which the Baltimore & Ohio will have secured the somewhat uncertain profits from increased interchange; the entire stock, amount not fixed, and the entire issue of adjustment and improvement mortgage bonds, amount not fixed, of the proposed new company; 7,501 shares of Southwestern Construction Company stock; and the obligation of J. P. Morgan & Company of a net value of $1,867,800 in their purchase of Pere Marquette stock. The last two items are those mentioned on page 210, *ante*, as of an estimated value of $3,368,000, which, if deducted from the aggregate expenditures before mentioned, $39,260,831, leaves $35,892,323 as the approximate net ultimate investment in a company which will own about 227 miles of railroad, already bonded for $21,250,450, and which will hold a perpetual lease on 141 additional miles on which fixed charges will amount to $305,728 per annum, or, at 5 per cent, a constructive capitalization of $6,114,560. These interest-bearing obligations against the owned and leased mileage of the proposed new company, $27,365,010, average $74,361 per mile. It will be necessary for the earnings to provide for the interest aggregating $1,195,746 per annum on this capitalization, and for other fixed

[1] Unexplained item appearing in last annual report of the Baltimore & Ohio on file with this Commission.

charges, before any payments can be made to the Baltimore & Ohio representing to it an earning on its approximate net investment of $35,892,323, or an average of $97,533 per mile additional. It remains to be seen what margin the earnings of the new company will provide to give value to its stock and junior bonds which are to belong to the Baltimore & Ohio. The latter in the fiscal year 1916 estimated the value of those securities at $25,000,000 and wrote off against its profit and loss account the difference, $10,892,323, between that value and the approximate net ultimate investment, $35,892,323, previously described. These figures do not take into consideration the interest from July 1, 1913, on this investment. To June 30, 1916, the minimum accrual at 5 per cent would aggregate $3,274,000. The Baltimore & Ohio has not entered accrual of this interest in its income for the three years named, so that no adjustments on that account will be necessary. But it should not be overlooked that this interest and that accruing year by year on the net aggregate investment has represented and will continue to represent a drain on Baltimore & Ohio earnings to the extent that it is not offset by increased interchange and profits received from the reorganized company.

XIII. PHYSICAL CONDITION OF C., H. & D., 1904–1916.

An inspection of the physical property of the C., H. & D. was made during the months of November and December, 1914, and January, 1915, by engineers of the division of valuation of the Commission in order to ascertain its condition, as required by the order instituting this proceeding. This inspection was made in the same way as in the case of the Pere Marquette; that is, the engineers made their inspection of roadway and track structures while traveling over the line in a motor car, being accompanied at all times by a division engineer of the company. Equipment, depot buildings, shop facilities, and engine-house facilities were separately examined, and the work was supplemented by use of the company's records pertaining to construction and maintenance.

The report of the engineers was submitted to the C., H. & D. in advance of hearing and was later incorporated in the record of this proceeding. It covers in detail the physical condition of the various elements of the road and equipment and includes a general summary to the effect that the property at the time of the inspection was somewhat below customary railroad operating condition. Although the roadway and track structure would average about the usual condition, the motive power, rolling stock, shop facilities, and machinery were so much below proper condition that the property as a whole was not up to what it should have been. There was evidence of some improvement and betterments in recent years since 1910, but

they were not extensive. It was also found that maintenance in the 9 or 10 years preceding 1914 had been less than was needed to keep the property in fair operating condition.

The roadway and track structures on the more important lines, being those from Cincinnati to Toledo and from Hamilton to Indianapolis, were found above the usual condition, but on the lines of lesser importance, particularly the Delphos division from Delphos to Ironton, were found so much below normal condition as to render the average only fair. The severest criticism, perhaps, was of the equipment and shop facilities. The equipment of all classes, locomotives, passenger cars, and freight cars, was generally in a run-down condition. Shop facilities were quite uniformly inadequate, and this, with the lack of proper engine-house facilities, was reported as largely responsible for the inefficient character of engine maintenance.

The C., H. & D. in April, 1913, suffered considerable damage from the Ohio and Indiana floods, as previously noted. The result was that for a year thereafter betterment and improvement programs had to be postponed in order to take care of extraordinary work necessary to repair flood damage. Also, the inspection was made in the midst of the business depression which quite generally affected the carriers in that territory from the close of the year ended June 30, 1913, until the spring of 1915, and caused some curtailment in expenditures.

In the opinion of the engineers the insufficient maintenance ran back something like 9 or 10 years, in other words, to about the close of the Woodford-Shoemaker régime. That management seems to have been ultraconservative; it had not quite kept up with the changed traffic conditions of its later years, and had not, in 1902, 1903, and 1904, followed the example of its competitors and enlarged its equipment and facilities generally. When the Zimmerman-Hollins management began in 1904, it purchased a large number of new and heavier locomotives and freight cars. That program necessarily called for heavier rails, ties, and bridges, and a generally bettered track structure throughout; failing this, considerably increased expenditures for maintenance would have resulted. The operating expense accounts of the C., H. & D. over these years indicate that beginning with the new management in July, 1904, there were greatly increased expenditures per mile of road for maintenance of way and equipment. But, in the opinion of the Commission's engineers, such expenditures were by no means as heavy as were necessary to keep the property up to the standard of maintenance which had evidently been followed in the previous years.

To put it shortly, there was a policy of deferred maintenance, particularly on the lines of lesser importance, and as to shops and equipment. The records as to the labor and materials applied to the property are not so complete on the C., H. & D. as on the Pere Marquette, but there is sufficient of record to show clearly that it was necessary in later years to take up much of what was not done in prior years. This is disclosed as to the track structure by the following statements of rail and tie renewals during the years from 1907 through 1915:

Statement showing tons of rail laid, 1907 to 1915, inclusive.

Year.	Toledo division.	Indianapolis division.	Delphos division.	Total.
1907	630	1,035	....	1,665
1908	2,109	1,132	....	3,241
1909	1,817	....	....	1,817
1910	4,803	1,276	....	6,079
1911	850	953	....	1,803
1912	980	1,120	....	2,100
1913	1,570	2,415	....	3,985
1914	750	72	....	822
1915	8,056	550	....	8,606

Statement showing number of ties put in, 1907 to 1915, inclusive.

Year.	Toledo division.		Indianapolis division.		Delphos division.		Total.	
	Main.	Side.	Main.	Side.	Main.	Side.	Main.	Side.
1907	109,493	33,684	112,233	11,258	38,865	9,357	260,951	54,299
1908	59,283	28,716	62,540	12,637	16,607	6,065	138,430	47,418
1909	90,786	30,525	92,357	14,128	38,698	7,954	221,840	52,607
1910	109,720	71,784	107,675	11,953	58,781	10,386	276,176	94,123
1911	86,984	56,659	117,769	18,197	94,365	17,681	299,118	92,537
1912	78,201	27,568	152,285	22,510	75,115	8,930	305,601	59,008
1913	88,350	33,350	140,647	17,333	89,594	6,922	318,591	57,605
1914	118,803	26,496	161,046	17,202	101,371	9,168	374,220	52,866
1915	177,490	63,080	92,402	16,743	124,191	19,563	394,092	99,336

The condition of the company's locomotives is shown in the next table, for quarterly periods beginning with March 31, 1907, so far as available records permit such a showing:

Quarterly period.	Locomotives.			
	Owned.	Awaiting condemnation.	Awaiting shop.	In shop.
Mar. 31, 1907	240	6	5	19
June 30, 1907	238	4	2	20
Sept. 30, 1907	234	5	1	19
Dec. 31, 1907	230	5	3	19
Mar. 31, 1908	225	1	1	18
June 30, 1908	225	1	1	16
Sept. 30, 1908	226	1	0	13
Dec. 31, 1908	226	1	2	15
Mar. 31, 1909	226	1	4	20

Quarterly period.	Locomotives.			
	Owned.	Awaiting condemnation.	Awaiting shop.	In shop.
June 30, 1909	235	1	4	17
Sept. 30, 1909	235	1	4	17
Dec. 31, 1909	234	1	4	22
Mar. 31, 1910	234	3	5	18
June 30, 1910	265	6	1	11
Sept. 30, 1910	260	6	8	20
Dec. 31, 1910	260	10	17	15
Mar. 31, 1911	260	11	14	20
June 30, 1911	260	14	(1)	(1)
Sept. 30, 1911	247	1	(1)	(1)
Dec. 31, 1911	247	1	(1)	(1)
Mar. 31, 1912	246	20	(1)	(1)
June 30, 1912	246	20	20	20–[2]2
Sept. 30, 1912	246	24	16	18–[2]1
Dec. 31, 1912	246	26	19	12–[2]1
Mar. 31, 1913	246	26	17–[2]4	17–[2]2
June 30, 1913	232	26	13	12
Sept. 30, 1913	232	32	13–[2]1	20
Dec. 31, 1913	232	35	18–[2]2	8
Mar. 31, 1914	232	35	15–[2]1	16–[2]1
June 30, 1914	232	35	15	17
Sept. 30, 1914	229	34	14	15
Dec. 31, 1914	195	....	21	14
Mar. 31, 1915	195	....	15	16
June 30, 1915	195	....	24	18
Sept. 30, 1915	191	....	9	18
Dec. 31, 1915	181	....	6	13

[1] Records missing. [2] At B. & O. shops; not included in total.

It will be seen from the foregoing that the locomotive condition ran down beginning in 1910. It was in that year that the last motive power was purchased by the C., H. & D. The situation was at its worst just about the time that the inspection was made by the engineers of the Commission. Thereafter came considerable improvement, and on December 31, 1915, only 19 locomotives were in or awaiting shop out of 181 owned, and there were none on the condemned list. During all this time, however, the C., H. & D. possessed adequate motive power facilities, an arrangement having been made with the Baltimore & Ohio whereby the latter road leased to it some 40 engines.

The statistics as to bad-order cars are not available back of September 30, 1912. At that time the company owned 10,988 freight cars of all classes, a decrease of almost 2,000 from its high point in 1908. The statement below shows the bad-order record quarterly beginning September 30, 1912, through December 31, 1915:

Freight cars.

Quarterly period.	Owned.	Awaiting condemnation.	Authorized condemned.	Awaiting repairs.
Mar. 31, 1907	(1)	(1)	(1)	(1)
June 30, 1907	(1)	(1)	(1)	(1)
Sept. 30, 1907	10,342	(1)	(1)	(1)
Dec. 31, 1907	(1)	(1)	(1)	(1)
Mar. 31, 1908	(1)	(1)	(1)	(1)
June 30, 1908	12,800	(1)	(1)	(1)

[1] Unavailable.

Freight cars—Continued.

Quarterly period.	Owned.	Awaiting condemnation.	Authorized condemned.	Awaiting repairs.
....				(1)
....				(1)
....				(1)
....				(1)
....				(1)
....				(1)
....				(1)
....				(1)
....				(1)
....				(1)
....				(1)
....				(1)
....				(1)
....				(1)
....				(1)
....				(1)
....				691
....				614
....				773
....				969
....				1,181
....				1,408
....				1,960
....				1,753
....				1,[illegible]
....		262		2,460
....		302	60	2,401
....		265	154	2,288
....		267	140	1,694
....		46	54	854

[1] Unavailable.

The freight cars, it will be noted, reached their worst condition after the inspection by our engineers. Bearing in mind that in December, 1915, some 1,300 freight cars were turned back to the Cincinnati, Indianapolis & Western upon the latter's reorganization, the trend of the statement would indicate that prior to 1912, freight car maintenance and condemnation had been greatly deferred.

A further idea of the extraordinarily poor condition of the C., H. & D. equipment is found in the course of the hire of equipment balances. This is shown for the years 1907–1915 in the next statement, and is an indication that the company's equipment is far below its requirements.

Fiscal year ending June 30—	Equipment owned.			Hire of equipment, balance.	Gross earnings.
	Locomotives.	Passenger.	Freight.		
1907	224	215	12,563	[1] $291,317.22	6,739,669
1908	225	215	12,800	[1] 322,036.54	6,011,682
1909	225	214	12,622	[2] 64,012.27	7,997,047
1910	230	213	11,961	[2] 108,427.60	9,446,224
1911	230	211	12,209	[2] 104,751.05	9,570,282
1912	244	209	11,276	[2] 185,865.36	9,625,329
1913	232	209	9,701	[2] 614,522.34	10,071,296
1914	232	196	9,357	[2] 904,068.95	10,094,217
1915	195	199	8,316	[4] 409,574.97	[3] 7,198,979

[1] Credit. [2] Debit. [3] Nine months. [4] Debit for nine months.

The increase of $425,668.98 in the loss of the year 1913 over that for 1912 is figured by the company to be accounted for as follows: Increased per diem rate, $122,105; locomotive rentals, $90,906; decrease in equipment owned, $127,677; account of flood conditions, etc., $84,980.98.

It should be added that at the time of the inspection by the Commission's engineers considerable betterment work was "programmed" and that in the year ended December 25, 1915, there had been put into the track 8,606 tons of rails, 191,542 tons of gravel ballast, 394,092 main-track ties and 99,336 sidetrack ties. These figures were far above the average for the previous seven years; as to the rail and ties, the performance surpassed every one of those seven years; as to the ballast, it was exceeded only by that of the year to December 25, 1909. There has also been an increase in the yard and passing track facilities, and 22 miles have been double tracked between Hamilton and Dayton. New shops have been built at both these latter points, and shop facilities and tools have been improved quite generally. New turntables have been put in at Dayton and at Lima, and at Lima and Hamilton new coaling stations have been erected. In these same months, all the passenger equipment has been put through the shop, and in the spring of 1916, was testified to be in good shape.

SUMMARY AND CONCLUSIONS.

In assembling the facts upon which the foregoing recital is based the Commission, through its valuation accountants, had access to and inspected, prior to hearing, the accounts, records, and memoranda, including correspondence files, of the two respondents and three other railroads. Similar examination was made of accounts, records, and memoranda in the files of five banking institutions bearing on the transactions under investigation, and a restricted inspection was made of such papers on file with two other banking institutions. These various examinations were conducted in seven cities. Examination was also made of the files of state railroad commissions, and recourse was had to records and decisions in court cases. Without the use of all such data it would have been impossible to construct this report.

This sordid tale has been told without adjectives. The facts speak for themselves, and they have been given in all their nakedness, without other comment than such as would serve to tie them to other facts, also of record.

Up to June 30, 1904, the railroad operation of the C., H. & D. was highly successful, particularly as contrasted with that of the

Pere Marquette. The former was thus enabled to carry along unsuccessful subsidiaries, by advancing moneys to meet their needs, and was strong enough to bear the losses which had resulted from the manipulations of Ives and his associates in the late eighties. The predecessors of the latter were subjected to successive receiverships and reorganizations in the endeavor to escape from operating deficits. In the old C., H. & D. dividends were the rule. With the predecessors of the Pere Marquette they were the exception.

Inflations of capital stock were incidents of the C., H. & D. consolidation in 1895 and of the Pere Marquette consolidation in 1900. This inflation was greater in the C., H. & D. than in the Pere Marquette because of their respective financial conditions. In neither case was it defensible.

The Pere Marquette after its organization in 1900 received three years of fair treatment from the Crapo-Thayer interests with some betterment of the property. But during the next 18 months it suffered at the hands of the Prince interests, who denied it proper maintenance, and so manipulated its accounts as to give color to their claim that it was earning the dividends on common stock which they paid. The new C., H. & D., after its organization in 1895, had continued its successful career despite the inflation of its stock. It regularly earned and paid its preferred dividends, accumulated a substantial surplus, and reached June 30, 1904, with its property in good condition, although not so up to date as that of some of its competitors.

Of the Prince interests it must be said that while their earlier Pere Marquette transactions are properly within the competence of an administrative tribunal, only a court of criminal jurisdiction could adequately deal with their subsequent transactions as to both of these roads. This taint of criminality attaches to many of their associates in the C., H. & D. syndication of May 19, 1904, and even more to their successors in C., H. & D. control, the Zimmerman-Hollins combination of interests, including the leaders of the Toledo and St. Louis syndicates who promoted the Toledo Railway & Terminal Company.

It is difficult to comment upon what was done to these properties in 1904 and 1905 without applying to those who did it the terms which they richly merit. The promoters of the C., H. & D. syndicate of May 19, 1904, did not hesitate to wield the club of expected corporate control in order to force necessary subscriptions. Nor did they hesitate to pledge the credit of the C., H. & D. and Pere Marquette to further their own schemes. Only in degree were their acts less criminal than those perpetrated by their successors, the Zimmerman-Hollins combination. The latter stopped at nothing, took every

chance, and succeeded in their astounding coup of unloading their C., H. & D. holdings upon J. P. Morgan & Company at $160 per share, when the C., H. & D. and its controlled lines were then ready to fall of their own weight.

It was in this connection that J. P. Morgan & Company became active in C., H. & D.-Pere Marquette affairs. That firm had for years been interested in the C., H. & D., having held some 23,000 shares of its common stock, or about one-seventh of its voting power, from 1901 up to July, 1904, when 20,000 shares were sold to the C., H. & D. syndicate. It has been the endeavor of Morgan & Company throughout this proceeding to prove that they were not aware of the actual condition of these two roads when J. P. Morgan made the suggestion to president Underwood of the Erie which resulted in the latter's purchase of the Hollins holdings of C., H. & D. stock. We have stated in detail the many facts of record to the contrary. With all that the record shows as to the "free hand" of the Erie in making this purchase of the C., H. & D., we find no reason to doubt that it was the Morgan influence in Erie affairs which dictated that purchase, and the Harriman influence which so soon thereafter forced Morgan to release the Erie from its bad bargain. Through that recission of its contract of purchase the Erie escaped all loss.

It has been suggested that Morgan & Company's participation in the Erie purchase could be readily understood if they were the principals for whom H. B. Hollins & Company had acted throughout. This record contains no evidence to indicate such agency; and its existence was unqualifiedly denied by the representative of J. P. Morgan & Company who appeared before us.

Next came the receiverships of December 4, 1905. The two roads secured from these and from the reorganizations which followed no substantial relief. Their properties were not rehabilitated to overcome the lack of proper maintenance under the prior maladministration, and there was no permanent reduction effected in fixed charges to offset what had been loaded on them by the Prince-Zimmerman-Hollins cliques. In the case of the Pere Marquette, fixed charges were actually increased in a reorganization which had as its basis the consolidation of the parent company and its Indiana subsidiary of 20 miles in length. That consolidation was the excuse for further inflation of the capital stock by using treasury shares as a bonus to a new issue of funded debt and for writing up as a part of the cost of road and equipment of the "new" company some $5,000,000 of worthless assets of the old. These "assets" included the direct losses suffered in the Prince-Zimmerman-Hollins exploitation. Those then in control of the Pere Marquette and its Indiana subsidiary petitioned for and secured the approval of that

consolidation by the Michigan Railroad Commission, alleging in their petition and otherwise advising that body that the capital stock outstanding would not be increased.

Commenting upon the fact that the carriers in *The Five Per Cent Case, supra*, adopted the book value as the nearest and most accurate reflection of the value of railroad properties devoted to public service obtainable at the present time, we said in 31 I. C. C., at pages 361 and 362:

> The nature and unreliability of the property investment accounts of carriers have frequently been commented upon by the Commission. * * * While the property investment accounts are used herein for the purposes of comparison, it must be understood that they are not accepted by the Commission as evidence either of the actual cost or the present value of these properties.

Transactions such as that just mentioned, whereby some $5,000,000 of worthless accounts become "cost of road and equipment" by a few strokes of the pen, justify our refusal to accept property investment accounts as establishing actual cost. The history of the Pere Marquette abounds with situations productive of similar improper charges to such accounts. The consolidation of 1900 furnished the pretext to inflate cost of road and equipment by $4,290,230.41. In the case of the C., H. & D., the extensive stock watering of 1895 was very largely offset by charges to property investment accounts. The heavy expenses incident to the manipulations of 1904–1905 were for several years reported to this Commission as "cost of road and equipment"; in fact, it was not until the assumption of C., H. & D. control by the Baltimore & Ohio that such expenses were charged to profit and loss.

In the case of the C., H. & D., the reorganization was entirely predicated upon the sale by Morgan & Company to the Baltimore & Ohio of C., H. & D. stock control and was characterized by the funding of defaulted interest and heavy expenses in order to avoid foreclosure and loss to the principal stockholder.

With respect to this purchase of Morgan holdings of C., H. & D. stock by the Baltimore & Ohio, our conclusions are based on what the record fails to explain as well as on what it does explain. The purchase was undertaken in the face of a most unfavorable report upon both present condition and future prospects, made by a Baltimore & Ohio official who had investigated the C., H. & D. at the instance of his directors. It may be that the directors chose to substitute their judgment for that of their representative. But we find nothing to explain why the purchase was still persisted in and carried through when the failure of negotiations with certain C., H. & D. security holders made necessary the assumption by the Baltimore & Ohio of obligations not theretofore anticipated, and the increase of the burden

of interest charges to an extent which more than offset its original expectations of profit from this C., H. & D. venture.

It is manifest that the formal recitals as to the C., H. & D. purchase found in minutes of meetings of the executive committee and directors of the Erie, and of the executive committee, directors, and stockholders of the Baltimore & Ohio, contain only what it was considered necessary to record in justification of the course previously determined upon by those to whom executive committees, directors, and stockholders were alike considered subordinate. The approximate net ultimate investment of the Baltimore & Ohio in the C., H. & D. will be $35,892,323, not including three years' interest to June 30, 1916, aggregating at least $3,274,000 at the rate of 5 per cent. Of this $35,892,323 the sum of $10,892,323 has already been written off as lost by the Baltimore & Ohio. The interest was not written off because it was never entered on the books. Under the proposed plan of reorganization the Baltimore & Ohio will own all of the stock of the new C., H. & D. The latter will own about 227 miles of railroad, of which 59 are in the Cincinnati-Dayton section of the main line and the balance in branches, the physical condition of which is not so good as that of the main line. Much of the branch-line mileage is unproductive. It will also own a perpetual lease of another 141 miles, being the main line between Dayton and Toledo. The constructive capitalization of this 141 miles, based on the consideration named in the lease, would be $43,000 per mile. The actual capitalization of the 227 owned miles is $93,000 per mile. These figures, treated as those of a railroad owning 368 miles, give a per mile capitalization of $74,361, underlying the Baltimore & Ohio's investment of $35,892,323, or $97,533 per mile without including interest, an aggregate of $174,894 per mile.

Although the C., H. & D. at the time it was examined by the Baltimore & Ohio was carrying an asset of $13,750,000, representing its 110,000 common shares of the Pere Marquette, the latter was not made the subject of any inquiry by the Baltimore & Ohio. There is some ground for the belief that the subsequent purchase of those 110,000 shares by Morgan & Company was then in contemplation. Seemingly, also, the control of the Pere Marquette has been exercised by that house since the first receivership.

In the few years between its first and present receivership the Pere Marquette managed to pay its bond interest, but only at the expense of proper maintenance. Not until the year ended June 30, 1912, was there any really effective attempt made to keep up the property, and it is significant that the second receivership began on April 5, 1912. To such an extent were maintenance of the road, struc-

tures, and equipment postponed that one of the chief problems of the present receivership has been the rehabilitation of the property. That rehabilitation has been thorough and its good effect has been noticeable in increased safety and economy of operation.

The C., H. & D. also suffered the evils of deferred maintenance almost from the close on July 7, 1904, of the successful Shoemaker-Woodford management. After the Baltimore & Ohio took it there followed in the year ended June 30, 1910, a considerable improvement in the character of the maintenance. This did not continue and the result was like that on the Pere Marquette. Revenues were seemingly inadequate to care for both fixed charges and continued proper maintenance. The spring flood in 1913 contributed to the ultimate result, but was by no means its chief cause. A second receivership began on July 2, 1914, and, since January 1, 1915, the work of rehabilitating the more important sections has been going on.

The exploitation in 1903, 1904, and 1905 of the Pere Marquette and the C., H. & D. was not an incident of railroad construction. The properties had long been established. Whatever control or regulation of the issue of railroad securities was exercised by the states in which these roads operate was inadequate to prevent the exploiting or to forestall subsequent hasty and unwise reorganization. To the extent that these flotations ultimately lodged in the hands of innocent investors, whether here or abroad, the public was deeply wronged. Whatever control or regulation was had of the properties and operations of the two roads was not sufficient to keep them in condition to satisfactorily serve the population dependent upon them. The result has been the same with each, financial disaster to the carriers, serious loss to the holders of their securities, deterioration of their physical properties, and a marked impairment of ability to perform their functions as public servants.

Nothing disclosed in the record before us is to be more regretted than the readiness of great banking institutions in our financial centers to loan enormous sums of money upon exceedingly precarious security in aid of such schemes as have been devised in the wrecking of these railroads. Not only this, but the high officers of such institutions, while acting ostensibly as directors of the railroads, have in fact been little more than tools and dummies for the promoters. The trustees of other people's money seem to have had little compunction about violations of their trusts for the benefit of the promoters, and at their demand.

Can the like of what has befallen these two roads be made impossible hereafter? Perhaps not entirely, so long as financial circles continue complaisant toward financial exploitations which prove suc-

cessful. But it will help if minority stockholders are more watchful of their interests and if bondholders assert their rights before their security fades away for lack of upkeep, purposely neglected in order to pay interest and dividends unearned. It would, in our opinion, render such exploitation more difficult if the issuance and marketing of all securities of common carriers were subject to federal regulation. As to that we renew the recommendations repeatedly made to the Congress in our annual reports. We also point to the lesson, here again taught, that access to correspondence files is indispensable for a thorough and accurate understanding of the motives and purposes which underlie the formal entries made in accounts and records.

Unwise management contributed to the downfall of these roads, but breach of trust by corporate officials, often for personal gain, was the main cause here, as in the records developed in other investigations. *Consolidations and Combinations of Carriers*, 12 I. C. C., 277; *The New England Investigation*, 27 I. C. C., 560; *St. Louis & San Francisco Railroad Investigation*, 29 I. C. C., 139; *Financial Investigation of N. Y., N. H. & H. R. R. Co.*, 31 I. C. C., 32; *Financial Transactions C., R. I. & P. Ry. Co.*, 36 I. C. C., 43. That downfall, with its deplorable consequences, can be traced only to betrayal within, and not to compulsion from without. Neither rivalry, nor rate level, nor regulation, nor all combined, can be found on this record to have contributed in any appreciable degree to the disaster.

In discussion of transportation conditions during the last two years or more much has been made of the fact that over 40,000 miles of our railroads were under receivership. A recent publication lists 69 railroads, among them the Pere Marquette and C., H. & D., as in the hands of receivers on December 31, 1916. Their combined operations cover 34,559 miles. Over 40 per cent of that mileage is in systems which, as shown by our investigations, have suffered principally from financial mismanagement and exploitation. Over 40 per cent more, of which a large part is located in Texas, is comprised in two southwestern systems. The remaining 5,800 miles are distributed among fifty-odd carriers in different parts of the country.

APPENDIXES.

porate history chart, Pere Marq

ht & Pere Marquette Ry. Co.........
June 4, 1872–Aug. 18, 1880.*)

't Huron & South Western Ry. Co.
Jan. 28, 1882–Dec. 9, 1882.§)

, Co ....

Chicago & Michigan Lake Shore R. R. Co.
(Apr. 24, 1869–July 19, 1869.§)

Lake Shore R. R. Co. of Western Michigan.
(July 3, 1869–July 19, 1869.§)

't Huron & Northwestern Ry. Co.
Mar. 23, 1878–Dec. 9, 1882.§)

R. Co.

cago & Michigan Lake Shore R. R. C
Oct. 24, 1872–Nov. 15, 1878.*)

chigan Lake Shore R. R. Co.........
Oct. 13, 1869–Sept. 27, 1878.*)

Detroit, Lansing & Lake Michigan R.
c. 11, 1872–Dec. 14, 1876.*)

Chicago, Saginaw & Canada R. R. C
n. 4, 1873–May 10, 1883.*)

Buren Division of the Toledo &
ven R. R.
April 21, 1876–Sept. 11, 1886.§)

Lake Michigan Division of the To
uth Haven R. R. Co.
Nov. 25, 1884–Sept. 9, 1886.□)

Paw R. R. Co.
Sept. 16, 1857–Sept. 9, 1886.□)

Joseph Valley R. R. Co... ....
une 12, 1884–May 7, 1889.*)

ings, Lowell & Northern Michigan R.
uly 9, 1883–May 28, 1887.□)

APPENDIX 6.—*Pere Marquette Railroad Company.*

DIVIDENDS PAID BY FLINT & PERE MARQUETTE, DETROIT, GRAND RAPIDS & WESTERN, AND CHICAGO & WEST MICHIGAN, AND BY THEIR PREDECESSORS, UP TO DEC. 31, 1899.

	Year.	Kind of stock.	Par receiving dividends.	Percentage rate.	Amount paid.	Total.
Port Huron & Northwestern Ry.	1882	Common	$1,090,000.00	6.0	$65,400.00	$65,400.00
Flint & Pere Marquette R. R.	1881	Preferred	6, 00.00	2.5	158,537.50	
Do	1881	do	6, 00.00	3.0	190,260.00	
Do	1882	do	6, 00.00	6.5	412,114.00	
Do	1883	do	6, 00.00	7.0	443,933.00	
Do	1884	do	6, 00.00	7.0	443,940.00	
Do	1885	do	6, 00.00	4.0	253,680.00	
Do	1886	do	6, 00.00	5.0	317,100.00	
Do	1887	do	6, 00.00	6.5	412,230.00	
Do	1888	do	6, 00.00	7.0	443,940.00	
Do	1889	do	6, 00.00	6.0	380,520.00	
Do	1890	do	6, 00.00	5.0	317,100.00	
Do	1891	do	6, 00.00	4.0	253,680.00	
Do	1892	do	6, 00.00	4.0	253,680.00	
Do	1899	do	6, 00.00	1.0	63,420.00	
Do	1899	do	6, 00.00	2.0	126,840.00	4,470,874.50
Detroit, Lansing & Northern R. R.	1878	do	2,481,200.00	2.0	49,624.00	
Do	1879	do	2,500,700.00	6.0	150,042.00	
Do	1879	do	2,502,500.00	3.5	87,587.50	
Do	1880	do	2,503,000.00	3.5	87,605.00	
Do	1880	do	2,503,100.00	3.5	87,608.50	
Do	1880	Common	1,825,000.00	3.5	63,875.00	
Do	1880	do	1,825,400.00	2.5	45,635.00	
Do	1881	Preferred	2,503,300.00	7.0	175,231.00	
Do	1882	do	2,503,300.00	7.0	175,231.00	
Do	1883	do	2,503,300.00	3.5	87,615.50	
Do	1883	do	2,510,000.00	3.5	87,850.00	
Do	1883	Common	1,825,500.00	6.0	109,530.00	
Do	1884	Preferred	2,510,000.00	7.0	175,700.00	
Do	1884	Common	1,825,500.00	6.0	109,530.00	
Do	1885	Preferred	2,510,000.00	5.5	138,050.00	
Do	1886	do	2,510,000.00	8.5	213,350.00	
Do	1887	do	2,510,000.00	7.0	175,700.00	
Do	1887	Common	1,825,500.00	3.0	54,765.00	
Do	1888	Preferred	2,510,000.00	3.5	87,850.00	2,163,376.50
Detroit, Grand Rapids & Western R. R.	1899	do	3,177,800.00	3.0	95,334.00	
Do	1899	do	3,182,000.00	3.0	95,460.00	190,794.00
Chicago & West Michigan R. R.	1881	Common	6,142,900.00	2.5	153,572.50	153,572.50
Chicago & West Michigan Ry.	1881	do	6,143,200.00	2.5	153,580.00	
Do	1882	do	6,150,200.00	3.0	184,506.00	
Do	1883	do	6,148,600.00	2.0	122,972.00	
Do	1884	do	6,150,200.00	3.5	215,257.00	
Do	1885	do	6,147,325.00	2.0	122,946.50	
Do	1886	do	6,141,500.00	2.5	153,537.50	
Do	1887	do	6,145,450.00	2.0	122,909.00	
Do	1888	do	6,150,200.00	2.0	123,004.00	
Do	1889	do	6,150,200.00	2.0	123,004.00	
Do	1890	do	6,[illegible],200.00	4.0	26[illegible],[illegible].00	
Do	1891	do	6,627,600.00	1.5	99,[illegible].00	
Do	1891	do	6,[illegible].00	2.0	132,771.00	
Do	1899	do	6,[illegible].00	1.5	99,573.00	
Do	1899	do	7,44[illegible].00	1.5	111,722.00	2,051,279.00
Total						9,074,[illegible].50

APPENDIX 7.—*Pere Marquette Railroad Company.*

DIVIDEND PAYMENTS, JAN. 1, 1900, TO JUNE 30, 1914.

Year 1900: 4 per cent on $12,000,000 preferred stock	[1] $480,000.00
Year 1901:	
2 per cent on $10,510,100 preferred stock	210,202.00
2 per cent on $10,512,200 preferred stock	[2] 210,244.00
Year 1902:	
2 per cent on $10,510,300 preferred stock	210,206.00
2 per cent on $10,510,500 preferred stock	210,210.00
Year 1903:	
2 per cent on $10,510,500 preferred stock	[3] 210,046.00
2 per cent on $10,509,600 preferred stock	210,192.00
2 per cent on $14,165,200 common stock	283,304.00
Year 1904:	
2 per cent on $10,509,700 preferred stock	210,194.00
2 per cent on $10,509,800 preferred stock	210,196.00
1 per cent on $14,165,800 common stock	141,658.00
Year 1905:	
2 per cent on $10,512,200 preferred stock	[4] 210,244.00
3½ per cent on $3,165,550 common stock	[4] 110,794.25
Total	2,907,485.25

[1] Includes dividend of $59,644 on $1,491,100 preferred stock in hands of reorganization committee, credited to general improvement fund.

[2] Includes dividend of $36 on $1,800 fractional shares, credited to general improvement fund.

[3] Includes adjustment of $164 account errors in computing shares outstanding in previous dividends.

[4] Dividends for 1905 were charged to Cincinnati, Hamilton & Dayton Ry. Co. under terms of lease agreement dated March 1, 1905, at which time the Cincinnati, Hamilton & Dayton Ry. Co. owned $11,000,000 par value common stock of the Pere Marquette R. R. Co., in addition to holding $1,487,800 par value preferred and $1,834,450 par value common treasury stock.

APPENDIX 8.

MANIPULATION OF FINANCES OF CINCINNATI, HAMILTON & DAYTON RAILROAD COMPANY BY HENRY S. IVES AND ASSOCIATES.

The accounts and records of the carrier do not yield sufficient facts from which to construct a connected, complete, and accurate story of the various acts of Henry S. Ives and his associates during the period of their control of the C., H. & D. or of the adjustment of the latter's financial difficulties which resulted therefrom. The only sources from which a narrative of the transactions involving the C., H. & D. can be obtained are the annual reports to its stockholders, and, as indicated by the following abstract thereof, those reports do not completely set forth the situation.

Apparently Ives's C., H. & D. transactions were a part of schemes involving other and larger properties. He and his associates gained control of the C., H. & D. in the spring of 1886. At a stockholders' meeting on June 15, 1886, they exercised their control by the election of their nominees as directors, officers, and members of the executive committee. Ives was elected a director, vice president, and member of the executive committee; George H. Stayner, one of his partners in the firm of Henry S. Ives & Company, was elected a director, president, and member of the executive committee; and E. Wilson Woodruff, a former partner of Ives and then a clerk in his service, was elected secretary and treasurer. The activities of Ives and Stayner extended to the time of their resignations as officers on August 9, 1887, and as directors on the following September 10, 1887, after an investigation of the company's affairs by a committee representing the minority stockholders.

This committee found that in this short time the following changes had occurred affecting the company's financial stability:

The common stock had been increased by $500,000 par value.

The series "A" and "B" preferred stock had been increased by $551,000 par value.

An entirely new issue of preferred stock has been put out to the amount of $10,000,000 par value.

The issue of 5 per cent consolidated sinking fund bonds had been increased by $64,000.

A new issue of 4½ per cent second mortgage bonds had been put out to the amount of $2,000,000 par value.

Common stock of the company in its treasury amounting to $2,800 had passed out of the possession and control of the company, as had also $65,000 par value of 7 per cent second mortgage bonds of the Cincinnati, Richmond & Chicago Railroad and $1,398,100 (27,962 shares) of common stock of the Dayton & Michigan Railroad, owned by the C., H. & D.

To represent this enormous increase of liabilities and the appropriation and conversion of securities owned by the company, amounting to about $14,500,000 par value, the C., H. & D. had, on August 9, 1887, betterments of its road, real estate, and additional equipment representing expenditures of less than $1,000,000; it had paid W. R. McKeen, of Terre Haute, Ind., $889,500 on account of a purchase of the controlling interest in the Terre Haute & Indianapolis

Railroad; and it had credit on the books of Henry S. Ives & Company for upward of $12,000,000 subject to check on demand. When that firm made an assignment on August 11, 1887, for the benefit of creditors its assets included less than $1,000 in cash.

Following the committee's investigation Stayner resigned the presidency and Ives the vice presidency on August 9, 1887, and changes were gradually brought about in the board of directors until September 10, 1887, when Stayner and Ives resigned as directors and the board became representative of the new management. The new directors promptly took various steps for the protection of the company and for recovery from the firm of Henry S. Ives & Company of whatever might be secured.

Indictments were returned in April, 1889, against Ives and Stayner based on the overissue of C., H. & D. common stock in June, 1886, to the amount of $710,000. The increase in common stock from $3,500,000 to $4,000,000 authorized by the board in November, 1886, and by the stockholders in February, 1887, gave Ives & Company the opportunity, of which they promptly availed themselves, to substitute about $480,000 of legally issued common stock for a similar amount of their overissue. They subsequently canceled an additional $230,000 of the overissue which they held, so that the amount outstanding of C., H. & D. common was reduced to the legal limit of 40,000 shares. Ives was brought to trial in September, 1889, but the jury disagreed.

It was found that the $65,000 of Cincinnati, Richmond & Chicago bonds had been taken from the company's safe and hypothecated as security for loans of the firm of Henry S. Ives & Company. Of the 27,962 shares of Dayton & Michigan common stock which the C., H. & D. owned Ives & Company had sold 22,500 shares, had hypothecated 5,000 shares for the firm's loans, and had attempted to hypothecate an additional 400 shares, but were frustrated when the certificates were presented for transfer, so that 462 shares were saved for the company. An unsuccessful attempt was made in September, 1888, to convict Stayner and Ives on an indictment charging them with the larceny of the Dayton & Michigan stock, but on a question of jurisdiction the court directed a verdict in their favor.

The new directors instituted a civil suit in the state of New York in January, 1889, and caused the arrest of Ives and Stayner under the statute of that state in an action for damages, indictments also being returned against them on charges of criminal offenses as officers of the company. They remained in jail until the end of March, 1890, when they were released on bail.

The new board of directors promptly denied the validity of the entire issue of $10,000,000 of preferred stock put out during the Ives régime and instituted proceedings to have the entire issue set aside as illegal and void. It found $5,259,400 of this stock in the possession of Ives & Company, who claimed to have purchased it, and, receiving it from them, the board immediately canceled it. A decree was obtained in the court of common pleas of Hamilton county, Ohio, canceling about $2,000,000 of the remainder, and over $1,527,400 was obtained, together with certain other securities, in exchange for $657,200 par of a new issue of 4 per cent guaranteed preferred stock of the so-called "Eagle" series.

With the intention of giving the C., H. & D. control of a line to St. Louis, the board on May 30, 1887, had authorized vice president Ives to purchase 20,000 shares, par value $50, of the total outstanding issue of 39,762 shares of stock of the Terre Haute & Indianapolis Railroad Company at a price not to exceed $100 per share. Between June 1 and 4, 1887, $889,500 was provided in cash and paid to W. R. McKeen, it being understood that 11,160 shares were

to come from him individually and that the other 8,840 shares were the property of the Terre Haute & Indianapolis. The 8,840 shares purchased from the railroad were transferred to Henry S. Ives, trustee, and were used by him as collateral for loans for his firm and in three instances for the Terre Haute & Indianapolis. Upon the assignment of Ives & Company, the new C., H. & D. directors found that all of the 8,840 shares were in the hands of persons who had advanced money thereon. The acquisition of the stock so pledged was undertaken by the directors. The 11,160 shares sold by McKeen individually had been left in his hands as security. Counsel having advised that the purchase from him was illegal, the company brought suit in the circuit court of the United States for the district of Indiana for the recovery of the $889,500 paid to him from the funds of the company.

In the pledging by Ives & Company of C., H. & D. assets and newly issued securities for firm loans other securities owned by them were also used as collateral. These and various other activities of that firm produced conditions so highly complicated that it was several years before the financial affairs of the C., H. & D. were straightened out. In this process of recovering its assets and of securing the cancellation of the spurious stock, other and new assets were acquired by the C., H. & D., the then value of which can not be determined. For this reason, and also because of the meager details furnished by the accounting records, it has not been possible to determine the net losses suffered by the C., H. & D. through the Ives manipulation. It may be pointed out, however, that in March, 1890, the profit and loss account of the company was charged with $2,234,959.44 on account of Ives losses, and $89,755.90 for expenses of Ives litigations was similarly charged at various times. These charges were offset to the extent of $64,184 on account of that portion of a dividend on Ives stock withheld by the company.

In addition to the losses just stated, there were various sums included in two asset accounts up to June, 1896, which represented expenditures in this connection. One of these accounts covered the $889,500 paid out for Terre Haute & Indianapolis stock. That sum was written off in the month named, presumably against profit and loss, by one of the entries which made the adjustments incident to the 1895 consolidation. This entry also closed out the other account which had been originated on the books to record sums handled istee charged with the settlement of the Ives transactions. This unt seems to have been used as a clearing account both for those ; and for related transactions, but sufficient details are not availrd the basis for a satisfactory analysis thereof. The account included $657,200 on account of the new issue of guaranteed preferred stock, eries, put out to retire the Ives spurious stock; some $178,000 cash to retire that spurious stock; and over $400,000 of cash disbursed nt of Ives loans, claims, etc.

ously stated, the C., H. & D. acquired other assets and settled other in many of these disbursements. It is impossible to determine tion thereof representing losses on account of Ives's transactions. losses were very substantial is evident.

STATEMENT SHOWING DIVIDENDS ON PREFERRED STOCK, SERIES "A" AND "B," TO JUNE 30, 1915.

Charged to accounts of fiscal year ended—	Account charged.	Dividend No.	Par value on which declared.	Amount of dividend.	Rate of dividend.	Manner of payment.
					Per cent.	
Mar. 31, 1903	Income account[1]	1	$111,000.00	[1] $1,110.00	1	Cash.
Do	do.[1]	2	347,900.00	[1] 5,218.50	1½	Do.
Mar. 31, 1904	do.[1]	3	431,100.00	[1] 6,466.50	1½	Do.
Do	do.[1]	4	449,000.00	[1] 6,735.00	1½	Do.
Do	do	1	449,000.00	2,245.00	½	Do.
Do	do	2	449,000.00	2,245.00	½	Do.
Do	do	3	449,000.00	2,245.00	½	Do.
Do	do	4	449,000.00	2,245.00	½	Do.
Do	do	5	449,000.00	2,245.00	½	Do.
Do	do	6	449,000.00	2,245.00	½	Do.
Mar. 31, 1905	do	7	449,000.00	6,735.00	1½	Do.
Do	do	8	449,000.00	6,735.00	1½	Do.
Do	do	9	449,000.00	6,735.00	1½	Do.
Do	do	10	449,000.00	6,735.00	1½	Do.
Mar. 31, 1906	do	11	449,000.00	6,735.00	1½	Do.
Do	do	12	449,000.00	6,735.00	1½	Do.
Do	do	13	449,000.00	6,735.00	1½	Do.
Do	do	14	449,000.00	6,735.00	1½	Do.
Mar. 31, 1907	do	15	449,000.00	6,735.00	1½	Do.
Do	Cash and income accounts[2]	16	1,	10,000.00	1	Do.
Do	Income account	17	1,	10,000.00	1	Do.
Do	do	18	1,	10,000.00	1	Do.
Mar. 31, 1908	do	19	1,	10,000.00	1	Do.
Do	do	20	1,	10,000.00	1	Do.
Do	do	21	1,	10,000.00	1	Do.
Do	do	22	1,	10,000.00	1	Do.
Mar. 31, 1909	do	23	1,	10,000.00	1	Do.
Do	do	24	1,	10,000.00	1	Do.
Do	do	25	1,	10,000.00	1	Do.
Do	do	26	1,	10,000.00	1	Do.
Mar. 31, 1910	do	27	1,	10,000.00	1	Do.
Do	do	28	1,	10,000.00	1	Do.
Do	do	29	1,	10,000.00	1	Do.
Do	do	30	1,	10,000.00	1	Do.
Dec. 31, 1910[3]	do	31	1,	10,000.00	1	Do.
Do[3]	do	32	1,	10,000.00	1	Do.
Do[3]	do	33	1,	10,000.00	1	Do.
Dec. 31, 1911	do	34	1,	10,000.00	1	Do.
Do	do	35	1,	10,000.00	1	Do.
Do	do	36	1,	10,000.00	1	Do.
Do	do	37	1,	10,000.00	1	Do.
Dec. 31, 1912	do	38	1,	10,000.00	1	Do.
Do	do	39	1,	10,000.00	1	Do.
Do	do	40	1,	10,000.00	1	Do.
Do	do	41	1,	10,000.00	1	Do.
Dec. 31, 1913	do	42	1,	10,000.00	1	Do.
Do	do	43	1,	10,000.00	1	Do.
Do	do	44	1,	10,000.00	1	Do.
Do	do	45	1,	10,000.00	1	Do.
Dec. 31, 1914	do	46	1,	10,000.00	1	Do.
Do	do	47	1,	10,000.00	1	Do.
Do	do	48	1,	10,000.00	1	Do.
Do	do	49	1,	10,000.00	1	Do.
June 30, 1915[4]	do	50	1,	10,000.00	1	Do.
Do.[4]	do	51	1,	10,000.00	1	Do.

[1] The amounts of dividends here shown are for the gross amount, which was reduced by the amount of interest accrued on stock when sold, the net amount being charged to income account. The figures are as follows:

	Gross amount of dividend.	Interest accrued on stock when sold.	Charge to income account.
Dividend No. 1	$1,110.00	$169.66	$940.34
Dividend No. 2	5,218.50	1,819.52	3,398.98
Dividend No. 3	6,466.50	129.07	6,337.43
Dividend No. 4	6,735.00	80.10	6,654.90

[2] Charge to cash was for $1,476.66, allowance of bank interest.

[3] Nine months' period ended Dec. 31, 1910.

[4] Six months' period ended June 30, 1915.

APPENDIX 9.—*Cincinnati, Hamilton & Dayton R. R. Co.*—Continued.

STATEMENT SHOWING DIVIDENDS ON PREFERRED STOCK, "EAGLE SERIES," TO JUNE 30, 1896.

Charged to accounts of fiscal year ended—	Account charged.	Dividend No.	Par value on which declared.	Amount of dividend.	Rate of dividend.	Manner of payment.
					Per cent.	
Mar. 31, 1889	Income account	1	$475,000.00	$4,750.00	1	Cash.
Do. Mar. 31, 1890	do. do.	2	496,500.00	1,655.33 3,310.67	1	Do.
Do.	do.	3	496,500.00	4,965.00	1	Do.
Do.	do.	4	521,600.00	5,216.00	1	Do.
Do.	do.	5	553,600.00	5,536.00	1	Do.
Do. Dec. 31, 1890 [1]	do. do.	6	553,600.00	1,845.33 3,690.67	1	Do.
Do. [1]	do.	7	573,900.00	5,739.00	1	Do.
Do. [1]	do.	8	587,900.00	5,879.00	1	Do.
Do. [1] Dec. 31, 1891	do. do.	9	587,900.00	1,959.67 3,919.33	1	Do.
Do.	do.	10	595,900.00	5,959.00	1	Do.
Do.	do.	11	595,900.00	5,959.00	1	Do.
Do.	do.	12	595,900.00	5,959.00	1	Do.
Do. Dec. 31, 1892	do. do.	13	607,900.00	1,986.33 4,092.67	1	Do.
Do.	do.	14	613,900.00	6,139.00	1	Do.
Do.	do.	15	613,900.00	6,139.00	1	Do.
Do.	do.	16	613,900.00	6,139.00	1	Do.
Do. Dec. 31, 1893	do. do.	17	613,900.00	2,046.33 4,092.67	1	Do.
Do.	do.	18	613,900.00	6,139.00	1	Do.
Do.	do.	19	613,900.00	6,139.00	1	Do.
Do.	do.	20	613,900.00	6,139.00	1	Do.
Do. Dec. 31, 1894	do. do.	21	619,800.00	2,046.33 4,151.67	1	Do.
Do.	do.	22	630,400.00	6,304.00	1	Do.
Do.	do.	23	677,000.00	6,[illegible]	1	Do.
Do.	do.	24	726,600.00	7,266.00	1	Do.
Do. June 30, 1895 [2]	do. do.	25	728,300.00	2,427.00 4,856.00	1	Do.
Do. [2]	do.	26	742,100.00	7,421.00	1	Do.
Do. [3]	do.	27	742,100.00	[3] 2,473.66	1	Do.

STATEMENT SHOWING DIVIDENDS ON COMMON STOCK TO JUNE 30, 1896.

Charged to accounts of fiscal year ended—	Account charged.	Dividend No.	Par value on which declared.	Amount of dividend.	Rate of dividend.	Manner of payment.
					Per cent.	
Mar. 31, 1853	Income account	1	....	$48,380.00	4	Cash.
Do.	do.	2	$1,600,000.00	80,000.00	5	Do.
Mar. 31, 1854	do.	3	2,047,000.00	102,350.00	5	Do.
Do.	Profit and loss	4	2,100,000.00	105,000.00	5	Do.
Mar. 31, 1855	do.	5	2,100,000.00	105,000.00	5	Scrip certificates due Sept. 1, 1857, with 7 per cent interest.
Mar. 31, 1856	Reserve funds	6	2,100,000.00	105,000.00	5	Capital stock, $54,100; cash, $50,900.
Mar. 31, 1857	Income account	7	2,155,800.00	75,453.00	3½	Cash.
Do.	do.	8	2,155,800.00	75,453.00	3½	Do.
Mar. 31, 1860	do.	9	2,15[illegible].00	75,453.00	3½	Do.
Do.	do.	10	2,15[illegible].00	75,453.00	3½	Do.
Mar. 31, 1861	do.	11	2,15[illegible].00	75,453.00	3½	Do.
Do.	do.	12	2,15[illegible].00	75,453.00	3½	Do.
Mar. 31, 1862	do.	13	2,15[illegible].00	75,453.00	3½	Do.
Do.	do.	14	2,15[illegible].00	86,232.00	4	Do.
Mar. 31, 1863	do.	15	2,15[illegible].00	[4] 111,122.71	[illegible]	Do.
Do.	do.	16	2,15[illegible].00	[4] 111,123.71	[illegible]	Do.
Mar. 31, 1864	do.	17	2,15[illegible].00	[4] 111,122.71	[illegible]	Do.
Do.	do.	18	2,4[illegible].00	[5] 126,840.20	[illegible]	Do.
Mar. 31, 1865	do.	19	2,5[illegible].00	[6] 131,578.94	[illegible]	Do.
Do.	do.		2,500,000.00	500,000.00	20	Stock.
Do.	do.	20	3,000,000.00	[7] 126,315.78	[illegible]	Cash.

[1] Nine months' period ended Dec. 31, 1890.
[2] Six months' period ended June 30, 1896.
[3] Balance of dividend No. 27 charged to income account of year ended June 30, 1896.
[4] Includes $3,233.71, government tax of 3 per cent on amount of dividend.
[5] Includes $3,283.38, government tax of 3 per cent on amount of dividend.
[6] Represents $100,000, dividend of 4 per cent on $2,500,000 paid stockholders; $25,000, government tax of 5 per cent on $500,000 stock dividend retained from amount due on cash dividend; $6,578.94, government tax of 5 per cent on this dividend amounting to $131,578.94.
[7] Includes $6,315.78, government tax of 5 per cent on amount of dividend.

APPENDIX 9.—*Cincinnati, Hamilton & Dayton R. R. Co.*—Continued.

STATEMENT SHOWING DIVIDENDS ON COMMON STOCK TO JUNE 30, 1895—Continued.

Charged to accounts of fiscal year ended—	Account charged.	Dividend No.	Par value on which declared.	Amount of dividend.	Rate of dividend.	Manner of payment.
					Per cent.	
Mar. 31, 1866	Income account.	21	$3,000,000.00	$150,000.00	5	Cash.
Do.	do.	22	3,000,000.00	120,000.00	4	Do.
Mar. 31, 1867	do.	23	416,000.00	16,640.00	4	Do.
			2,584,000.00	129,200.00	5	Stock.
Do.	do.	24	497,200.00	19,888.00	4	Cash.
			2,632,000.00	131,600.00	5	Stock.
Mar. 31, 1868	do.	25	307,050.00	18,423.00	6	Cash.
			2,953,750.00	336,300.00	8	Stock.
Mar. 31, 1869	do.	26	3,500,000.00	175,000.00	5	Scrip redeemable in first mortgage bonds of D. & M. R. R. Co.
Do.	do.	27	3,500,000.00	175,000.00	5	Scrip redeemable in third mortgage bonds of D. & M. R. R. Co.
Mar. 31, 1870	do.	28	3,500,000.00	175,000.00	5	Scrip redeemable in third mortgage bonds of D. & M. R. R. Co., bearing interest from Oct. 1, 1869.
Do.	do.	29	3, 00	140,000.00	4	Cash.
Mar. 31, 1871	do.	30	3, 00	140,000.00	4	Do.
Do.	do.	31	3, 00	140,000.00	4	Do.
Mar. 31, 1872	do.	32	3, 00	140,000.00	4	Do.
Do.	do.	33	3, 00	140,000.00	4	Do.
Mar. 31, 1873	do.	34	3, 00	140,000.00	4	Do.
Do.	do.	35	3, 00	[illegible]	4	Do.
Mar. 31, 1880	do.	36	3, 00	122,500.00	3½	Do.
Mar. 31, 1881	do.	37	3, 00	70,000.00	2	Do.
Mar. 31, 1883	do.	38	3, 00	105,000.00	3	Do.
Do.	do.	39	3, 00	[illegible]	3	Do.
Mar. 31, 1884	do.	40	3, 00	105,000.00	3	Do.
Do.	do.	41	3, 00	105,000.00	3	Do.
Mar. 31, 1885	do.	42	3, 00	105,000.00	3	Do.
Do.	do.	43	3, 00	105,000.00	3	Do.
Mar. 31, 1886	do.	44	3, 00	[illegible]	3	Do.
Do.	do.	45	3, 00	105,000.00	3	Do.
Mar. 31, 1887	do.	46	3, 00	[illegible]	2	Do.
Do.	do.	47	3, 00	70,000.00	2	Do.
Do.	do.	48	3, 00	70,000.00	2	Do.
Do.	do.	49	4, 00	[1] 80,000.00	2	Do.
Mar. 31, 1888	do.	50	4, 00	[1] 80,000.00	2	Do.
Mar. 31, 1890	do.	51	4, 00	[illegible]	1¼	Do.
Do.	do.	52	4, 00	50,000.00	1¼	Do.
Dec. 31, 1890[2]	do.	53	4, 00	[illegible]	1¼	Do.
Do.[2]	do.	54	4, 00	50,000.00	1¼	Do.
Do.[2]	do.	55	4, 00	50,000.00	1¼	Do.
Dec. 31, 1891	do.	56	4, 00	50,000.00	1¼	Do.
Do.	do.	57	4, 00	[illegible]	1¼	Do.
Do.	do.	58	4, 00	[illegible]	1¼	Do.
Do.	do.	59	4, 00	50,000.00	1¼	Do.
Dec. 31, 1892	do.	60	4, 00	50,000.00	1¼	Do.
Do.	do.	61	4, 00	50,000.00	1¼	Do.
Do.	do.	62	4, 00	50,000.00	1¼	Do.
Do.	do.	63	4, 00	50,000.00	1¼	Do.
Dec. 31, 1893	do.	64	4, 00	50,000.00	1¼	Do.
Do.	do.	65	4, 00	50,000.00	1¼	Do.
Do.	do.	66	4, 00	50,000.00	1¼	Do.
Do.	do.	67	4, 00	50,000.00	1¼	Do.
Dec. 31, 1894	do.	68	4, 00	50,000.00	1¼	Do.
Do.	do.	69	4, 00	50,000.00	1¼	Do.
Do.	do.	70	4, 00	50,000.00	1¼	Do.
Do.	do.	71	4, 00	50,000.00	1¼	Do.
June 30, 1895[3]	do.	72	4, 00	50,000.00	1¼	Do.
Do.[3]	do.	73	4, 00	50,000.00	1¼	Do.

[1] $628 of dividend No. 49 and $[illegible] of dividend No. 50, representing amounts due H. S. Ives & Co., was transferred in March, 1890, to credit of surplus earnings.
[2] Nine months' period ended Dec. 31, 1890.
[3] Six months' period ended June 30, 1895.

APPENDIX 10.

Memoranda for Agreements Between the Local Parties, the Bankers, the Voting Trustees, the Northern Company, the Southern Company and the Local Company.

1. Proper and lawful agreements between the necessary parties shall be entered into simultaneously so that the following matters shall be lawfully agreed to.

2. The Southern Company shall purchase one hundred thousand (100,000) shares of the stock of the Northern Company and all of the agreements with reference to the relation between the Northern and Southern Companies specified in a memoranda hereto attached and marked "Exhibit A." and made a part hereof, shall be fully arranged for and carried out.

3. In consideration of the several things hereinafter referred to, to be done and performed by the bankers, the voting trustees, the Northern Company and the Southern Company, the local parties will agree to purchase twelve thousand (12,000) shares of the underwriting of the Southern Company upon the same basis and terms as the other underwriters.

4. The bankers will purchase either the three million five hundred thousand (3,500,000) four and a half per cent (4½%) bonds of the local company at par and interest, or the equivalent of said bonds of new four million (4,000,000) four per cent (4%) issue. If said issue is made at four per cent (4%) the difference in value of the bonds between the four and a half per cent (4½%) and the four per cent (4%) estimated at five points shall be borne equally between the local company and the bankers.

Said bonds shall be paid for by the bankers as follows, viz: A cash payment sufficient to meet the cash payment upon the underwriting specified in item three, and the balance on or before ninety days thereafter, with interest at the rate of four or four and a half per cent according to the interest of the bonds.

The bankers shall have the option to determine whether said bonds shall be issued at four or four and a half per cent as above provided, but they shall make their election before the final contract for the purchase of said bonds is executed.

5. The Northern and Southern Companies shall jointly and severally guarantee the principal and interest of either the three million five hundred thousand (3,500,000) four and a half per cent (4½%) bonds or the four million (4,000,000) four per cent (4%) bonds, and also the one hundred and fifty thousand (150,000) bonds of the subsidiary company.

The guaranteeing companies will promptly pay any instalment or instalments of interest or any part thereof from time to time which the local company shall be unable to pay, and for any such interest so paid by them the local company shall issue to the guaranteeing companies, in such proportion as they may require, preferred five per cent cumulative stock of said local company at par; it being understood that the local company shall increase its capital stock by issuing preferred stock for said purpose, but that no preferred stock shall be issued by it for any other purpose without the consent of the guaranteeing companies.

6. The Northern and Southern Companies shall make a joint and several trackage agreement and an agreement for the use of the terminals and stations of the local company in substantial accordance with the talk heretofore had by the representatives of said respective companies.

7. All Southern stock owned, purchased or represented by the parties mentioned in the caption to this memoranda shall be pooled and trusteed. Trustee certificates shall be issued and application to list the same on the New York and Boston Exchanges, shall be promptly made.

8. The local interests shall have representation on the directory in the Southern Company in proportion to the amount of their stock in the pool.

Subject to approval of our respective principals.

(Sgd) L. B. PIERCE
" NEWMAN ERB
" F. H. PRINCE
" THOS. H. TRACY
" JAS. J. ROBISON
" WM. HARDEE

MAY 5, 1904.

EXHIBIT "A."

PERE MARQUETTE.

CINCINNATI, HAMILTON & DAYTON.

1. The Cincinnati, Hamilton and Dayton and the Pere Marquette Railroad Companies are to enter into a contract, so far as they lawfully can, for reciprocal preferential interchange of traffic, and in consideration of the advantages to accrue to the Pere Marquette therefrom, the latter will agree by said contract to pay and deliver to the Cincinnati, Hamilton and Dayton ten thousand shares of Pere Marquette preferred, (or possibly common), stock, now controlled through Trustees holding the same for it. The contract to be for not less than fifty and may be for ninety-nine years.

2. The holders of sixty-five thousand shares of common stock and ten thousand shares of preferred stock of the Cincinnati, Hamilton and Dayton, together constituting a majority of its issued votable capital stock, are to contract to sell the same, at $110 per share for the preferred and $125 per share for the common, to a syndicate, the managers of which will be named in the contract: The first payment, $2,125,000 therefor, to be made at a fixed date, $2,500,000 on or before four months, $2,806,250 on or before eight months, and the balance on or before twelve months thereafter.

With the first payment all said stock is to be deposited with the United States Mortgage and Trust Company of New York, and upon payment of the second installment, forty per centum (40%) of the deposited stock is to be released and delivered to the Syndicate Managers, or to their order.

With said payment, (the second), the management and control of the Cincinnati, Hamilton and Dayton will be surrendered. a majority of the Directors resign and new directors nominated by the syndicate managers elected in their place.

The Cincinnati, Hamilton and Dayton has already authorised a mortgage upon all of its property for the purpose of securing an issue of $25,000,000 par value of Fifty year Four per cent bonds, of which approximately $15,000,000 are to be used to retire previous issues, some of which mature (approximately $2,500,000) during 1905. Under this mortgage $10,000,000 bonds will be available for other corporate purposes.

Appropriate corporate action shall be taken at once by the Cincinnati, Hamilton and Dayton R. R. Co., and the necessary contracts executed on behalf of that company, the same to be delivered to the United States Mortgage & Trust Co., to be held by said Trust Company until said second payment is made and upon said second payment being made the same shall be delivered to the other parties to said contracts.

3. A contract is to be made by the Cincinnati, Hamilton and Dayton with Bankers, by which the latter will agree to acquire and deliver to the Cincinnati, Hamilton and Dayton a total of not less than one hundred thousand shares of the common stock of the Pere Marquette Railroad Company; in consideration for which (or in that proportion for any greater number of shares but not exceeding a majority of the issued shares) bankers are to be paid:

$2,500,000 cash.

750,000 in C. H. & D. 2½ years 4½% Notes secured by 10,000 shares Pere Marquette preferred stock.

7,500,000 out of the $25,000,000 4% mortgage bonds, and 50,000 shares of Cincinnati, Hamilton and Dayton common stock or other obligations as hereinafter mentioned.

The Cincinnati, Hamilton and Dayton is to increase its capital stock to the extent required for this payment. If, for any reason, said increase in the capital stock shall be delayed, the Cincinnati, Hamilton & Dayton will, if so requested by Bankers, or their assigns, in lieu of stock, deliver its obligations in a form to be prescribed by the syndicate managers, to the amount of $5,000,000; but it is understood that any such obligations shall be redeemable at any time in Cincinnati, Hamilton & Dayton increased common stock upon a basis of par and said obligations shall draw no interest except upon a basis of dividends paid on such common stock.

4. Bankers will deliver their agreement, and the agreement of holders of at least 100,000 shares of the Pere Marquette common stock, but not exceeding a control, with whom Bankers will contract, and deposit the agreements with the United States Mortgage and Trust Company, and upon delivery of such Pere Marquette stock said stock-holders shall receive therefor securities as follows:

75% or $75 per share, in said 4% C. H. & D. bonds, and $50 per share in C. H. & D, common stock,

or the equivalent of the latter in other C. H. & D. obligations, in the event of inability to deliver said stock within a reasonable time, but any obligations so given shall be redeemable at any time in the increased Cincinnati, Hamilton and Dayton common stock on above basis.

5. All said agreements will be deposited with the United States Mortgage & Trust Company in trust, under an agreement that the stock deposited will be voted in favor of any resolutions at special or annual meetings, so far as the same may be necessary to carry out the objects contemplated, and that the Board of Directors of the respective Railroad Companies may, without objection, vote for and carry out the various matters referred to.

6. Upon the deposit of the Pere Marquette stockholders' agreement as aforesaid with the Trust Company, the resignations of the existing directors, so far as they may be called for by the syndicate managers, shall be lodged with the Trust Company, and new directors nominated by the syndicate managers elected in their place.

7. All of the acquired Pere Marquette stock, viz: the 100,000 shares referred to, and the other stock of the Pere Marquette, acquired by the Cincinnati, Hamilton and Dayton, not needed to carry out this plan shall be pledged as additional security for the payment of the $25,000,000 bonds referred to.

8. All of the Cincinnati, Hamilton and Dayton stock acquired in payment for the Pere Marquette stock is to be deposited under a Voting Trust Agreement, for a term of not less than five years, with suitable provision for an extension of the time, on the request of one-half, or thereabouts, of the holders in amount of the Certificates of Beneficial Interest, which may be issued therefor.

9. The United States Mortgage and Trust Company is to lend Syndicate Managers, for a period of fifteen months, at five per centum per annum interest, $2,500,000 with the 40% released C. H. & D. stock as collateral, to enable syndicate managers to anticipate the second installment of the purchase price of the Cincinnati, Hamilton and Dayton stock, so there will be no further payment required from the syndicate subscribers until eight months after the first payment has been made.

10. The syndicate managers to be authorised to sell the preferred stock at not less than par for the purpose of anticipating any installments of purchase money.

11. Bankers are to agree with the syndicate managers in consideration of the subscriptions made to furnish the money to acquire the Cincinnati, Hamilton and Dayton stock to pay to subscribers the entire purchase price to be paid Bankers for the Pere Marquette stock, and the syndicate managers will make settlement for the Pere Marquette stock and apply any surplus in reduction of the payments to be made by the syndicate for the Cincinnati, Hamilton and Dayton stock, or the amount borrowed from the United States Mortgage and Trust Company.

12. The increased commission of $2,500,000 and the proceeds of the $1,000,000 preferred stock shall inure to the benefit of the under-writers of the C. H. & D. stock.

APPENDIX 11.—*Participants in loan of $2,500,000 to syndicate managers of C., H. & D. common-stock syndicate and renewal thereof.*

Name.	Address.	Amount of participation in loan of July 7, 1904.	Amount of participation in renewal loan of July 6, 1905.
Kinnicutt & Potter	New York City	$100,000	$100,000
W. Bayard Cutting	....do	100,000	....
R. Fulton Cutting	....do	100,000	....
National Commercial Bank	Albany, N. Y	50,000	50,000
Union Trust Company of Albany	....do	25,000	25,000
Guardian Savings & Trust Company	Cleveland, Ohio	50,000	50,000
Morristown Trust Company	Morristown, N. J	100,000	100,000
Rudolph H. Kissel	New York City	50,000	20,000
Geo. J. Little	....do	50,000	10,000
Security Trust Company of Troy	Troy, N. Y	25,000	25,000
Windsor Trust Company	New York City	100,000	100,000
Savings Association	....do	20,000	....
American Exchange National Bank	....do	100,000	....
Bank of Commerce of North America	Cleveland, Ohio	50,000	50,000
Commercial Trust Company of New Jersey	Jersey City, N. J	200,000	200,000
F. R. Moeller	New York City	10,000	10,000
National Bank of Commerce in New York	....do	250,000	250,000
Orange National Bank	Orange, N. J	50,000	50,000
The Coal & Iron National Bank	New York City	50,000	50,000
Syracuse Trust Company	Syracuse, N. Y	25,000	25,000
The Mechanics Trust Company	Bayonne, N. J	15,000	15,000
Manhattan Trust Company	New York City	50,000	50,000
Henderson & Company	....do	100,000	....
The Corn Exchange Bank	....do	100,000	100,000
Kings County Trust Company	Brooklyn, N. Y	50,000	....
Colonial Trust Company	New York City	250,000	250,000
Brown Bros. & Company	....do	100,000	100,000
Aurelius B. Hall	....do	10,000	10,000
United States Mortgage & Trust Company	....do	210,000	190,000
James A. Webb	....do	10,000	10,000
Norfolk Bank for Savings and Trusts	Norfolk, Va	50,000	50,000
St. Paul National Bank	St. Paul, Minn	50,000	25,000
United States Mortgage & Trust Company—Savings Association.	New York City	....	20,000
City Trust Company	Boston, Mass	....	100,000
Traders National Bank	Rochester, N. Y	....	50,000
Siegel, Cooper & Company	New York City	....	10,000
Nassau Trust Company	Brooklyn, N. Y	....	30,000
Williamsburgh Trust Company	....do	....	25,000
First National Bank	....do	....	25,000
Jenkins Trust Company	....do	....	25,000
Genesee Valley Trust Company	Rochester, N. Y	....	50,000
Mercantile Trust Company	St. Louis, Mo	....	200,000
Cleveland Trust Company	Cleveland, Ohio	....	50,000
Total		2,500,000	2,500,000

APPENDIX 12.

THE TOLEDO RAILWAY & TERMINAL COMPANY.

The facts disclosed by this record as to the affairs of the Toledo Railway & Terminal Company, hereinafter called the "terminal company," are of such importance, viewed from the standpoint of public interest in railroad financing, as would justify the inclusion of a complete recital in the body of this report. Such a course, however, would too seriously interrupt the connected presentation of the financial histories of the C., H. D. and Pere Marquette, with which this investigation is chiefly concerned, and would also result in the inclusion of matters foreign to the histories of those two roads. The plan has been adopted, therefore, of telling the story of the terminal company in this appendix and including in the body of the report only such matters as relate more directly to the affairs of the two principals.

The terminal company was an Ohio corporation formed in September, 1900, to build an outer belt railway some 38 miles in length, with both passenger and freight terminals, at Toledo, Ohio. The incorporators were: Thomas H. Tracy, Charles F. Chapman, jr., William B. Duck, Frank W. Caughling, and James A. Murphy. The first board of directors of the company consisted of the four first named and Harry E. King, all members or employees of the law firm of King & Tracy, of Toledo. They were elected on February 12, 1901, and with Chas. Wyatt, John R. Peck, Robert V. Law, and Robert J. Law, elected on February 1, 1902, served thereafter to and including the meeting on October 6, 1904. Throughout that period all action of the board was directed by Thomas H. Tracy, the other directors being mere figureheads. Some were neither notified of nor present at meetings at which they are recorded as having voted. Tracy exercised like control over the meetings of stockholders. The reasons back of this domination by Tracy will appear later.

The capital stock was fixed by the articles of incorporation at 1,000 shares of the par value of $100 each. Ten per cent was subscribed for as follows:

Names.	Shares.	Names.	Shares.
Thomas H. Tracy	1	John R. Peck	19
Harry E. King	1	Robert V. Law	19
Charles F. Chapman, jr	1	Lawrence J. Pugh	19
William B. Duck	1	Robert J. Law	19
Frank W. Caughling	1		
Charles Wyatt	19	Total	100

At meetings on April 17, 1901, the stockholders and board of directors approved a contract with the Toledo Railway & Terminal Construction Company, hereinafter called the "construction company," for acquisition of the property necessary for the proposed railway and terminals and for construction and equipment thereof. The construction company had been formed under the laws of Ohio by a group of business men of Toledo, who held interests in it as follows:

	Per cent.
D. Robison, jr., & Sons Company	19½
Edward Ford	19½
John Cummings	14
Geo. G. Metzger	9½
King & Tracy	4½
Wm. Hardee	14
James J. Robison	9½
James J. Robison, trustee	9½
Total	100

D. Robison, jr., & Sons Company was a private banking firm, composed of D. Robison, jr., and his sons, James J. Robison and Willard F. Robison. The three were also directors of the Ohio Savings Bank & Trust Company, of Toledo, hereinafter called the "Ohio bank," of which the first named was president and James J. Robison was secretary, treasurer, and cashier. The beneficiary of the latter's holdings as trustee was not disclosed of record, but it was established that these holdings did not represent beneficial interests for any other than those otherwise interested in their own names.

Edward Ford was president of the Edward Ford Plate Glass Company and vice president and director of the Ohio bank. John Cummings was a local capitalist, later chairman of the board of the Ohio bank. George G. Metzger, of the Metzger Linseed Oil Company, was also a capitalist, with large real estate interests. King & Tracy was the law firm which organized the terminal company. William Hardee was an officer of the National Supply Company.

On September 6, 1901, the directors of the terminal company authorized the issuance of 900 shares of its stock to the nominee of the construction company, William Wertz, as payment of $90,000 for work said to have been performed by that company under the construction contract. At the same meeting president King reported that the 100 shares of stock previously issued had not been paid for, and that the holders thereof had assigned their interests therein to the construction company, on condition that the latter should pay what was due on the stock by crediting the terminal company on sums owing under the construction contract. It was thereupon voted to issue to the same nominee the 95 shares standing in the names of Charles Wyatt, John R. Peck, Robert V. Law, Lawrence J. Pugh, and Robert J. Law, and to let the other 5 shares remain in the names of the directors, they having repurchased the same from the construction company. Those repurchases were made for a nominal consideration only, and simply to qualify the holders as directors.

The absolute control of the terminal company is thus seen to have rested with the construction company from the outset, and this condition existed up to April, 1905, when by a roundabout route the terminal company stock was sold to the Pere Marquette.

At a meeting on September 6, 1901, its stockholders voted to increase the capital stock to $2,500,000, and on February 1, 1902, the authorized issue was again increased, this time to $3,500,000.

The record does not show the original plans for financing the construction of this terminal road. Some property had been acquired and construction work was under way when, in November, 1901, negotiations were opened with the Commonwealth Trust Company, of St. Louis, hereinafter called the "Commonwealth Company," for aid in such financing through the underwriting of bonds to be issued by the terminal company. These negotiations were successful and resulted in the execution of a new construction contract, in the increase in capital stock as just stated, in provisions for an issue of bonds, and in the execution of several new agreements which, though bearing different dates, were really contemporaneous. Further facts as to these matters follow.

What may be considered the keystone of the new financing plans was an agreement dated February 21, 1902, herein termed the "purchase agreement," between the terminal company, the construction company, and the Commonwealth Company, whereby the latter agreed to purchase from the construction company $3,000,000 of bonds and $1,100,000 of the stock of the terminal company for the sum of $2,700,000. This document reaffirmed a provision of the new construction contract between the terminal company and the construction company that the total issues of stocks and bonds of the terminal company

should be limited to $3,500,000 each; also that $500,000 of each class should be held in the treasury, the reserved bonds being issuable only for betterments and extensions of the railway, terminals, and equipment, and the reserved stock being issuable only for its "full reasonable value." The Commonwealth Company was given an option at 92½ on any of the $500,000 of the reserved bonds which might be issued during the continuance in force of a certain "pooling agreement," to be later described, and the terminal company agreed that after the termination of the option it would not sell any of said $500,000 of bonds without first giving the Commonwealth Company the refusal thereof. The latter was to be the trustee under the mortgage securing the bonds, and as soon as issued the $3,000,000 of bonds and $3,000,000 of stock were to be delivered to it, to be held and disposed of according to this agreement and the contracts between the terminal company and the construction company. The $500,000 of reserved bonds also were to be delivered to the Commonwealth Company for the purposes of this agreement. The Commonwealth Company was to hold all the stock under the terms of the "pooling agreement" for 18 months from the date of the acceptance of the completed railway by the terminal company, and for an additional period of one year in case the earnings during the last 6 months of the 18 months should not be sufficient to pay operating expenses and the interest on the $3,000,000 of bonds. During the continuance of the stock pool the Commonwealth Company was to exercise one-third of the voting rights in the terminal company and to elect one-third of its directors, the construction company's interest being two-thirds. The construction company agreed to pay the Commonwealth Company $25,000 for all its services and expenses as trustee; to allow $100,000 to remain invested in the property until the delivery and acceptance of the road; to bear any loss in case the cost of construction exceeded $2,700,000; to give a bond or collateral in the sum of $300,000 for performance of the construction contract and other obligations; to guarantee the completion of the road by September 1, 1903; to pay all interest earned on said bonds up to date of delivery and acceptance of road, such interest to be paid quarterly to the Commonwealth Company on all sums paid by the latter on account of the purchase price of the bonds; and to make up the deficiency if earnings failed to pay the interest on the bonds during the first year following said date of delivery and acceptance. This agreement was authorized by the stockholders and board of the terminal company on February 20, 1902.

To provide for raising the $2,700,000 of cash which would be required under the purchase agreement just described, an underwriting syndicate was formed in St. Louis, under an agreement dated January 16, 1902, whereby the Commonwealth Company on behalf of the subscribers was to enter into the said purchase agreement, each subscriber agreeing to pay at 90 for the bonds subscribed for by him. The subscribers were to receive with each bond $300 of stock, which was to be held by the Commonwealth Company under the "pooling agreement," together with the $1,900,000 of stock belonging to the construction company. Interest on the bonds was to begin from the several dates at which the Commonwealth Company should pay the purchase price therefor to the construction company, such purchase price being payable only as the work of construction progressed and upon the certification of the Commonwealth Company's engineer. The latter company was given an option to purchase each subscriber's bonds at 92½ at any time within 12 months from the date of the completion and acceptance of the road, and each subscriber was required and entitled to sell his pro rata share in case only part of said 3,000 bonds were thus purchased.

This St. Louis underwriting agreement was signed and subscribed to as follows; the names starred are of those who at the time were officials or directors of the Commonwealth Trust Company:

Name.	Amount of bonds.	Amount of stock.	Purchase price.
*Chas. H. Turner	$50,000	00	$45,000
*Lawrence B. Pierce	100,000	00	90,000
*L. B. Tebbetts	100,000	00	90,000
*Elias Michael	50,000	00	45,000
*A. D. Brown	100,000	00	90,000
*Edward F. Goltra	100,000	00	90,000
*Reid Northrop	100,000	00	90,000
*Henry Nicolaus	100,000	00	90,000
*Otto F. Stifel	100,000	00	90,000
T. W. Carter	100,000	00	90,000
James T. Drummond	100,000	00	90,000
*Sam'l C. Davis	100,000	00	90,000
S. W. Fordyce	100,000	00	90,000
R. M. Scruggs	100,000	00	90,000
*C. G. Knox	100,000	00	90,000
*S. M. Dodd	100,000	00	90,000
*C. G. Warner	100,000	00	90,000
Wm. D. Orthwein	100,000	00	90,000
John E. Pilcher	100,000	00	90,000
*Russell Harding [1]	100,000	00	90,000
Altheimer & Rawlings Investment Co. (by Ben Altheimer, pres.)	100,000	00	90,000
F. E. Marshall	50,000	00	45,000
Francis, Bro. & Co.	150,000	00	135,000
William K. Morgan	34,000	00	30,000
Harvey L. Christie	33,000	00	30,000
P. Taylor Bryan	33,000	00	30,000
Wm. F. Nolker	50,000	00	45,000
Philip Stock	50,000	00	45,000
Chas. A. Stix	25,000	00	22,500
Wm. Stix	25,000	00	22,500
Jesse D. Dana	100,000	00	90,000
Total	2,550,000	765,000	2,295,000

[1] Became a director Apr. 10, 1902.

Later the subscription of Henry Nicolaus was reduced by half, thus making the St. Louis underwriters responsible for an aggregate of $2,500,000 in par of bonds, for which $2,250,000 in cash was to be paid. To provide for the remaining $500,000 of bonds, the Commonwealth Company, through an agreement with the construction company dated February 20, 1902, arranged for the sale to the latter of $500,000 of bonds and $150,000 of stock for the sum of $450,000. It was agreed that said sum should be paid in installments representing one-sixth of amounts becoming due to the construction company from time to time for bonds sold by it to the Commonwealth Company under the purchase agreement. This $150,000 of stock was to be included in the pool and the Commonwealth Company was given an option for 12 months from the delivery and acceptance of the road on all of the $500,000 of bonds at 92½. As and when paid for the stock and bonds were to be delivered to the Ohio bank as trustee, to be held by it as the property of the construction company, but subject, respectively, to the pooling agreement and to the option of purchase given the Commonwealth Company, as just stated.

The agreement just described did not express completely the transaction covering this repurchase of stock and bonds by the construction company. By letter dated February 21, 1902, Lawrence B. Pierce, vice president of the Commonwealth Company, gave to James J. Robison, holder of a large interest in the construction company, a confirmation of a verbal agreement to the effect that, in consideration of this Toledo underwriting of one-sixth of the

$3,000,000 of bonds, Robison, or anyone whom he might designate, was to receive $41,666.67 par value out of the St. Louis underwriters' $1,100,000 of stock, in addition to the usual bonus of $300 of stock with each $1,000 bond subscribed for by the Toledo people, and was also to receive the profits on the $500,000 of bonds over and above 92½, less brokerage, should the Commonwealth Company exercise its option to repurchase such bonds.

So far as the terminal company's stock was concerned, the effect of the several agreements, therefore, was that the $3,000,000 issuable under the construction contract was divided $2,091,667 to the construction company and $908,333 to the St. Louis interests, the latter amount representing the $1,100,000 acquired with the bonds under the purchase agreement, reduced by $150,000 and $41,667 allowed the construction company under the repurchase arrangements as just described. The stock which was not allotted to the individual St. Louis underwriters was retained by the Commonwealth Company itself. The record before us leaves no doubt that the $3,000,000 of stock was issued purely as a bonus. In view of the subsequent sale of that stock as related herein, the fact that it was issued as a bonus to the bonds is of great importance.

With the exception of Altheimer & Rawlings Investment Company, which put up 100 per cent cash as called, none of the subscribers to the St. Louis underwriting paid in a single dollar of cash on account of their subscriptions. Instead they gave notes for amounts equal to their respective subscriptions, which notes fell due September 1, 1904, and provided for 5 per cent interest on amounts advanced by the Commonwealth Company on account thereof. These notes were secured by pledges of the bonds and stock subscribed for and by additional collateral of the value of $15,000 for each $100,000 of such bonds. The underwriters were not called upon to pay interest on these notes, that having been otherwise provided for by the requirement that the construction company should pay interest during construction.

The St. Louis underwriting agreement was supplemented by one not dated, in 1903, whereby the contracts made by the Commonwealth Company for the purchase of the stock and bonds from the construction company and all acts of the Commonwealth Company done or to be done in connection with the same were ratified and confirmed, and it was constituted the agent of the underwriters for all the purposes of said contracts or modifications thereof. This later agreement was not executed by the following underwriters: L. B. Tebbetts, T. W. Carter, and Francis, Bro. & Co.

We now come to another feature of the new financing plans; that is, the "pooling agreement," already referred to several times. This agreement was ntered into between the holders of the stock of the terminal company and Villard F. Robison, Edward Ford, and Chas. H. Turner, voting trustees. uccessors to the first two were to be selected by the Ohio bank and to the hird by the Commonwealth Company. The agreement was to terminate and the stock was to be redelivered to the holders 18 months after delivery to and acceptance by the terminal company of its railway, if the interest on the latter's bonds was earned during the last 6 of said 18 months, but if the interest was not so earned the agreement was not to terminate until 30 months after delivery and acceptance of the road. Until such termination the stock was to be deposited with the Commonwealth Company and held by it for the purposes of this trust, each certificate bearing a notation that stock evidenced by it was subject thereto. The voting power of the deposited stock was vested in the voting trustees, one-third to each.

The pooling agreement was executed in duplicate originals. One dated March 15, 1902, was signed by—

Henry Nicolaus.
Philip Stock.
Chas. A. Stix.
Francis, Bro. & Co.
Altheimer & Rawlings Inv. Co.
(By Herm. C. Stifel, Treasurer.)
Russell Harding.
William Stix.
Wm. V. Delahunt.
Otto F. Stifel.
L. B. Tebbetts.
Saml. C. Davis.
P. Taylor Bryan.
T. W. Carter.
James T. Drummond.
John E. Pilcher.
F. E. Marshall.
Reid Northrop.
C. G. Warner.
C. G. Knox.
S. M. Dodd.
William E. Morgan.
Harvey L. Christie.
Lawrence B. Pierce.
A. D. Brown.
W. F. Nolker.
R. M. Scruggs.
Chas. H. Turner.
W. D. Orthwein.
S. W. Fordyce.
Elias Michael.
Jesse D. Dana.
(By Edward F. Goltra, attorney.)
Edward F. Goltra.

The other duplicate original dated July 5, 1902, was signed as follows:

Thos. H. Tracy	One share
Harry E. King	One share
Charles F. Chapman, Jr.	One share
Wm. B. Duck	One share
Frank W. Caughling	One share
Charles Wyatt	One share
John R. Peck	One share
Robert V. Law	One share
Robert J. Law	One share
John A. Archer	Twenty thousand four hundred ninety one (20,491) shares.

From facts referred to later on, it is undoubtedly true that Archer's execution of this agreement was not for himself, but was on behalf of the Toledo syndicate. In this way the membership of that syndicate was kept secret. It is also of interest to remark that the agreement was apparently executed by only one of the voting trustees, Charles H. Turner. Some time prior to November 12, 1902, Edward Ford was succeeded by James J. Robison as voting trustee.

As previously stated, the new financing plans required the execution of a new construction contract between the terminal company and the construction company, thereby canceling the original contract of April 17, 1901. The new contract was dated February 1, 1902, and was approved by the board and stockholders of the terminal company on that date. Under its terms the latter company agreed to give the construction company $3,000,000 in par of its capital stock and $3,000,000 of its first mortgage 4½ per cent 40-year bonds in full payment for the completed railway and terminal, yards, depot, etc., and four locomotives, it being understood that the total capital stock and total bond issues of the terminal company were to be limited to $3,500,000 each; also, that the remaining $500,000 of each class of obligation was not to be "issued or used except for the purpose of additional extensions, equipment, or improvements" not provided for by the construction contract. Payments under the construction contract in stocks and bonds of the terminal company were to be made upon the certification of two engineers, one selected by each company, as to work done. The securities were to be issued from time to time in the proportion which the then completed work and property acquired should bear to the total amount of work to be done, property to be acquired, and material to be furnished.

Under this new construction contract, and in accordance with the specific votes of the directors and stockholders on February 20, 1902, the terminal company indorsed its guaranty of principal and interest on the entire issue, $150,000, of the bonds of the Toledo Riverside Railway Company, receiving in consideration thereof the transfer and delivery to it of the entire issue, $150,000, of the capital stock of that company. The Riverside Company seems to have been promoted by the Robisons. Its bonds were issued under a mortgage on some 37 acres of lands with a 1,200-foot water front on the east bank of the Maumee River, and a right of way for a spur track connecting said land with the Toledo Belt Line, which property had been held for some time by the Robisons. The construction contract specified that these bonds were to be owned by the construction company. The property was later conveyed to the terminal company by deed dated July 2, 1904, subject to the mortgage underlying the bonds.

On January 23, 1902, the board designated the office of King & Tracy, 501 Nasby building, Toledo, Ohio, as the principal business office of the terminal company in the state of Ohio. At the same meeting and at the request of the construction company, they voted to permit one John A. Archer to subscribe for $2,400,000 par value of the capital stock of their company. That request had been made in view of the large expenditures under the construction contract. This subscription having been formally made, the board voted that, in further pursuance of the request of the construction company, said Archer be credited upon account of his subscription with 10 per cent of the par value thereof, and that said sum should be charged to the account of the construction company at such time as said company should call for an estimate under the construction contract of April 17, 1901, at which time the adjustment between the two companies was to be made. The board then voted that the capital stock of the company be increased to $3,500,000, which increase was ratified by the stockholders on February 1, 1902, as already stated.

On February 5, 1902, the stockholders and the board of the terminal company voted the issuance of $3,500,000 of 4½ per cent 40-year bonds under the company's mortgage, to the Commonwealth Company, as trustee. The Ohio bank was appointed registrar of the company's stock and the form of stock certificate was adopted.

This completes the recital of facts relative to the new financing plans as adopted early in 1902 in consequence of the enlistment of St. Louis capital in the enterprise. The construction work continued for over a year and a half. By resolution of the board on December 3, 1903, the road was declared completed on or before September 1, 1903, and its acceptance was voted as of October 1, 1903. It was then also voted to allow the construction company to remain in temporary possession of and to operate the property which was to be surrendered, however, to the terminal company upon its demand, the construction company meanwhile accounting for the receipts and disbursements incident to such operation. The president was instructed to certify to the Commonwealth Company the completion and acceptance of the property and to request the delivery to the construction company of the balance of the $3,000,000 of bonds and $3,000,000 of stock which the terminal company had agreed to pay for the completed property. The completion of the work was certified to by the engineer of the Commonwealth Company on January 7, 1904, and the final payments by it to the construction company under the contract to purchase the $3,000,000 of bonds and $1,100,000 of bonus stock were made in February, 1904.

In addition to the property furnished under the construction contract, the construction company built several sidetracks and supplied 50 ballast and 50 secondhand gondola cars, to cover which a supplemental agreement dated November 18, 1902, was entered into, by which the construction company was to be allowed cost plus a profit of 10 per cent on such extras. Provision was also made therein for furnishing 6 additional locomotives at cost plus a profit of 5 per cent. Payment was to be made in terminal company's bonds at 90. The terminal company's board approved this contract on November 18, 1902, and contemporaneously authorized vice president Tracy to dispose, at not less than 90, of such of the $500,000 of reserved bonds then in the treasury as would be needed to pay for such tracks and equipment.

At a meeting on December 3, 1903, the board instructed the president to certify to the Commonwealth Company that the construction company was entitled to $186,152.58 net for extra work, material, and equipment under the supplemental contracts and that this amount, together with $9,050.33 for materials delivered to the terminal company, was to be paid from the proceeds of the bonds. The Commonwealth Company's engineer, however, reduced this claim for "extras" to $185,873.99, and on February 25 the trustee allowed the construction company the corresponding number of bonds at 90, viz, $206,000. No separate delivery of bonds to or on account of the construction company because of the materials valued at $9,050.33 is of record, but such action was evidently contemplated, for in a contract of March 15, 1904, later described, the Commonwealth Company agreed to deliver bonds at 90 in payment of claims for extras *and material*, stated to aggregate approximately $195,000. It is evident, therefore, that as late as March 15, 1904, $195,000 represented the aggregate due the construction company for the extras and materials furnished, or, translated into par value of terminal company bonds at 90, about $216,000 of bonds.

The foregoing facts are set forth in greater detail than would ordinarily be necessary, because of the subsequent issuance of bonds to a greater amount than the final allowance for extra work would justify, as will later appear.

There is inserted below a comparative income account for the terminal company compiled from its books:

Toledo Railway & Terminal Company (including receiver).

CONDENSED INCOME ACCOUNT STATEMENT FOR THE PERIOD OCT. 1, 1902, TO OCT. 31, 1907.

	Railway operating revenues.	Railway operating expenses.	Net revenue (or *deficit*) from railway operations.	Railway tax accruals.	Railway operating income (or *deficit*).	Total operating income (or *deficit*).	Nonoperating income.	Gross income.	Deductions from gross income.	Net income (or *deficit*).	Balance transferred to profit and loss.
Period ending June 30, 1904	$69,117.00	$88,436.19	*$19,319.19*	....	*$19,319.19*	*$19,319.19*	$12,850.83	$3,531.14	$76,726.02	*$73,194.88*	*$73,194.88*
July 1, 1904, to June 30, 1905	157,180.66	303,247.38	*146,066.72*	$5,578.39	*151,645.11*	*151,645.11*	83,760.41	*67,884.70*	160,914.35	*228,799.05*	*228,799.05*
July 1, 1905, to June 30, 1906	214,489.25	230,496.15	*16,006.90*	20,556.72	*36,562.62*	*36,562.62*	90,324.06	53,761.44	160,618.83	*106,857.39*	*106,857.39*
July 1, 1906, to June 30, 1907	220,498.31	248,000.95	*27,507.64*	12,586.94	*40,094.58*	*40,094.58*	56,553.77	16,459.19	163,065.28	*146,606.09*	*146,606.09*
Four months ending Oct. 31, 1907 [1]	83,575.83	92,025.59	*8,449.76*	2,997.82	*11,447.58*	*11,447.58*	45,552.68	34,105.10	53,733.76	*19,628.66*	*19,628.66*
Total	744,856.05	962,205.26	*207,349.21*	41,719.87	*249,069.08*	*249,069.08*	289,041.25	39,972.17	615,058.24	*575,086.07*	*575,086.07*

[1] Includes subsequent adjustments of income.

By the spring of 1904 the terminal road had been in operation for several months, and during that time had failed to earn fixed charges. It must have been apparent to its promoters that it was necessary for them to market their securities at an early date in order to avoid having their prospective profits wiped out by accumulating interest charges. Such attempts as had been made to sell those securities following the completion of the road had been unsuccessful up to that spring. But in connection therewith there were transactions recorded which deserve attention because of their significance in the light of subsequent events.

Thus, by an option dated March 14, 1904, authority was given the construction company by a "committee representing St. Louis underwriters," with the approval of the Commonwealth Company, to sell within 45 days all the stock represented by that committee. If all the $3,000,000 outstanding stock was sold, those interests were to receive not less than $10 per share. If only a majority was sold, they were to receive not less than $15 per share. A condition was that no stock should be sold unless all the issued bonds were sold at not less than par and interest, or else guaranteed, principal and interest, by one or more of the following companies: Pennsylvania Company; Cincinnati, Hamilton & Dayton Railway Company; Lake Shore & Michigan Southern Railway Company; Grank Trunk Railroad Company of Canada; or Michigan Central Railway Company. The construction company agreed by letter of same date to endeavor to obtain the best possible price for the bonds under said option, in no event accepting less than par and interest. The letter stated:

> It is understood that we own approximately $700,000 par value of said bonds, including the $500,000 which we have underwritten, and *about $200,000 which we have received for extras.* (Italics ours.)

If all the issued bonds were sold above par, the construction company was to receive the entire proceeds from its 700 bonds, except $50 per bond to be paid the Commonwealth Company, apparently in consideration for the nonexercise of its option to purchase those bonds at 92½. But if the issued bonds brought only par, the construction company was to receive only $925 and interest for its bonds, the balance of the proceeds of those bonds and all the proceeds of the other bonds going to the Commonwealth Company.

Contemporaneously, on March 15, 1904, the terminal company, the construction company, and the Commonwealth Company entered into an agreement which stated that the completed property had been accepted by the terminal company under date of September 15, 1903, and fixed certain rights of the construction company and the terminal company accordingly. Among other things, it was provided that the construction company should pay interest on all bonds outstanding, except those owned by it, up to September 15, 1904. In the resolution of the terminal company's board approving this agreement on March 17, 1904, this feature was given prominence, the evident intention being thereby to change the acceptance date from October 1, 1903, as previously approved, to September 15, 1903. The significance of this change lies in the fact that the construction company was under contract to pay the unearned interest on the bonds for one year from the date of acceptance of the road.

Again, under this contemporaneous agreement the Commonwealth Company was to deliver to the construction company bonds at 90 in payment for extras and material furnished the railway company, aggregating approximately $195,000. This latter amount, be it noted, evidently represented the aggregate of such items to March 15, agreeing with figures previously given.

The record is entirely clear in showing that early in February, 1904, preceding the execution of the two contracts just described, active negotiations

were had between the Toledo and St. Louis interests as to the terms on which the property should be sold. During their course Tracy proposed that the entire authorized issue of terminal company bonds, $3,500,000, both earned and unearned, be disposed of and that the proceeds from the unearned bonds be divided between the St. Louis and Toledo interests on the basis of their respective holdings of stock. Vice president Lawrence B. Pierce of the Commonwealth Company objected to the issuance of treasury bonds, not in fact earned, in the following language:

Since the mortgage provides that the treasury bonds can be issued only for extensions and betterments, the trustee may not be authorized to certify these bonds, except in accordance with the terms of the mortgage, even though the stockholders and present bondholders should consent.

This commendable stand was not maintained by the trustee, but was flatly abandoned in the following amazing provision of an agreement dated April 21, 1904, with the construction company, signed for by Tracy, and a "committee representing St. Louis underwriters," signed for by Pierce, the latter also signing for the Commonwealth Company:

In case the $200,000 of bonds of the Toledo Railway & Terminal Company, now in the treasury of said company, are disposed of, the proceeds therefor, together with any excess received for said $3,300,000 of bonds above par and interest, shall be divided among the stockholders pro rata.

It should also be noted that in this remarkable document the construction company's compensation for "extras" is for the first time fixed at $300,000. It refers to that company's interest as—

bonds owned by them, approximating $800,000 par value, the same being the $500,000 originally underwritten by them, and the bonds heretofore received and hereafter to be received by them for extras.

With $300,000 of bonds claimed for "extras," there remained $200,000 out of the $500,000 reserved by the underlying agreements for additions and betterments only. No claims against these $200,000 of bonds for such additions and betterments had then been made or were ever afterwards made. They were treasury bonds, the issuance of which had been restricted by the provisions of before-described agreements. The terminal company, with whose treasury bonds it was thus proposed to take such liberties, was not a party to the agreement, but its complete control in proportions hereinbefore stated then lay in the hands of those who were. The St. Louis and Toledo syndicates, of course, would reap the direct benefit from the contemplated sale of the treasury bonds. The document did not specify the capacity in which the Commonwealth Company signed, but it was the trustee under the mortgage securing the bonds, and could not in any capacity participate in such an act and remain faithful to its trust. It is true that when the $200,000 of bonds were sold some months later the proceeds were not distributed among the stockholders, as had been proposed, but were used for the other purposes hereinafter indicated. That does not cure the breach of trust made in signing the agreement.

This agreement of April 21, 1904, was good until May 5 and modified the previously described option agreement of March 14, 1904. By its terms the construction company was allowed to pay a commission of $10,000 if the terminal company stock should be sold at $10 per share, and provided that the Commonwealth Company should receive par and interest on its $2,500,000 of terminal company bonds and that the construction company should receive a like price on the $800,000 of bonds described as "owned by them," in the

section of the agreement just quoted. With reference to that provision for allowing the construction company $300,000 of bonds for "extras" it may be recalled that the Commonwealth Company on February 25 had allowed $206,000 of bonds for $185,873.99 of such expeditures which were certified to by its engineer. Its records contain no evidence of any further expenditures of that character. Even allowing for the $9,050.83 additional for materials and supplies, the outside amount in bonds due the construction company would not have exceeded $216,000 par value. Contrary to previous and subsequent practice in recording minutes of the terminal company's directors' meetings, the particular minute authorizing the delivery of these $300,000 bonds contains no statement whatever of the amounts of the claims allowed to justify such issue. Further, it is found that 13 days before this corporate action the terminal company had executed options for the sale of the full $3,300,000 of its bonds, including the $300,000 under consideration.

The efforts of the Toledo and St. Louis interests to sell out their terminal company holdings were unsuccessful until a deal was made with the promoters of the C., H. & D.-Pere Marquette combination. They succeeded then only by becoming involved in a new venture, for the promised sale of their bonds was gained only after they had agreed to subscribe in substantial amounts—ultimately one-fifth of the aggregate—to the C., H. & D. common-stock syndicate.

The various features of this new undertaking were expressed in a memorandum agreement made with the promoters of the syndicate, and dated May 5, 1904, printed herein as Appendix 10. In consideration of the Toledo and St. Louis subscriptions, this agreement provided, (*a*) that purchasers for the terminal company bonds would be furnished who would buy at par and interest, payments therefor to be made in such a manner as to meet the cash payments falling due on the C., H. & D. syndicate subscriptions, and the balance within 90 days; (*b*) that the terminal company and Toledo Riverside bonds would be jointly and severally guaranteed as to principal and interest by the Pere Marquette and C., H. & D., which companies would pay unearned interest on the bonds, receiving for such payments the 5 per cent cumulative preferred stock of the terminal company; (*c*) that the two guaranteeing roads would enter into an agreement for the use of the terminal company's tracks, terminals, and facilities; and (*d*) that the St. Louis and Toledo interests would have representation on the board of the C., H. & D. proportionate to their subscriptions. Strict adherence to this contract is evidenced by the record of subsequent events.

The promised sale of these bonds at par and interest was guaranteed by F. H. Prince & Company and Newman Erb, who seemed to be the prime movers in the C., H. & D. syndicate, and under an agreement of June 10, 1904, they also guaranteed personally to pay the difference between that price and the sale price named in two contracts for the sale of such bonds entered into by the terminal company on the same date. One of these was with Rudolph Kleybolte & Company for $2,000,000 of terminal company bonds at 97 and interest, with an option on $500,000 more on the same terms. The other contract was in two parts (1) with the construction company for $150,000 Toledo Riverside Railway Company bonds and $200,000 terminal company bonds, and (2) with F. H. Prince & Company for $1,300,000 terminal company bonds, $500,000 of which were subject to Kleybolte's option. Under this latter contract the bonds were to be bought at 97½ and interest. These contracts were ratified by the St. Louis underwriters in an agreement dated June 14, 1904, by which they contemporaneously confirmed the execution of the C., H. & D. syndi-

cate subscriptions made on their behalf for 6,500 shares, and also agreed that the Commonwealth Company would be entitled to all proceeds from the sales of bonds in excess of 92½.

The agreements between the owners of the terminal company bonds looking to the sale thereof evidently either expired or were not put into effect, for the ultimate sale was arranged under a new agreement between the Commonwealth Company, the construction company, and the terminal company. This bore date May 20, 1904, but was not executed until about June 23, 1904, and evidently resulted from the final outcome of the arrangements with respect to the C., H. & D. syndicate. This agreement recited that the $3,500,000 of bonds were owned by said three parties in the sums of $2,500,000, $800,000, and $200,000, respectively, and then provided (1) that necessary corporate action should be taken by the terminal company to confirm the titles thereto in the amounts stated, and (2) that the entire $3,500,000 of bonds were to be sold by the terminal company at par and interest upon terms satisfactory to the other two parties. The proceeds from the sale of $3,300,000 were to be applied first to the payment of the subscriptions of the Commonwealth Company and the terminal company aggregating 13,000 shares of C., H. & D. stock, such subscription payments to be charged against the bond holdings of the trust company and the construction company, one-half each. The latter was to be released from its guaranty of the payment of the interest on the bonds. The proceeds of the terminal company's $200,000 of bonds were to be held in trust for its benefit by the Commonwealth Company. This change of viewpoint as to the $200,000 followed upon the negotiations between the Toledo-St. Louis interests with the other promoters.

The provision of the foregoing agreement requiring the terminal company to confirm the ownership of bonds by formal corporate action is very significant in view of the fact that contracts for the sale of all the bonds had been entered into some 13 days before, and in view of the further fact that the terminal company had not yet authorized the issuance of the full $300,000 of bonds for "extras," etc. Also significant is the following excerpt from a letter of June 23, 1904, to Thomas H. Tracy from Lawrence B. Pierce, who had executed the agreement on behalf of the Commonwealth Company:

> With reference to the bonds owned by the parties named therein, I have signed this agreement conditional upon your making the proper requisition for the balance of the bonds due the construction company to bring the total amount up to $800,000 * * *.

The required corporate action in this connection was taken by the stockholders of the terminal company on June 23, 1904, following the formal authorization of the agreement of May 20 by the board on the same day. There had been presented to the board at its meeting a communication from the construction company reciting that the latter had certain bills against the terminal company long overdue and unpaid, some of which had been allowed and others not allowed. The communication did not detail what the bills were for or even the amounts thereof, but simply stated that the construction company would accept $300,000 of bonds and $500,000 of stock in full settlement of any and all claims to date. In a preamble to the resolution then adopted authorizing the issuance and delivery of the securities in those amounts it is recited that the construction company had previously furnished material and equipment and performed work not specified in the original construction contract, but here again, contrary to the previous and subsequent practice of the company, the aggregate cost thereof was significantly omitted. The fact is that the directors and stockholders had no real knowledge of what they did, their votes

being cast, as always, at Tracy's direction and with his assurance that it was the thing to do.

The wording of these minutes was calculated to support the theory that the $500,000 of terminal company stock was given as part payment of the aforesaid claims. Such was not the fact. Going back for a moment, it should be noted that one of the provisions of the June 10, 1904, bond sale contract with Rudolph Kleybolte & Company required that the corporate action and form of mortgage respecting the bonds should be satisfactory to Storey, Thorndike, Palmer & Thayer, a Boston law firm, understood to represent Prince & Company. Referring to one of the members of that firm, Tracy wired Pierce on June 21 as follows:

> Palmer wires thinks necessary to issue entire amount of stock to cover question I discussed with you. I therefore think better issue five hundred thousand stock on account final construction company contracts holding same in name of trustees for benefit of railway company. Please wire consent.

Pierce's answer on the following day was:

> We consent to issue of treasury stock in name of trustees for benefit of railway company.

Furthermore, a letter, dated June 23, from Tracy to Palmer shows that the only reason for the issuance of the last block of $500,000 of stock was to make the issue of stock at least equal to the issue of bonds and thereby satisfy all possible doubt as to the legality of the latter under the Ohio statutes.

The most important feature of this stock transaction is the fact that, contrary to Tracy's proposal and Pierce's consent that the stock be issued for the benefit of the terminal company, it was issued to the construction company, being placed at the latter's request in the name of Robert J. Law as trustee. As a witness in this proceeding Law testified that he knew nothing of the trust under which he acted, that the stock was simply issued in his name for convenience, and that he at once indorsed the certificates in blank and delivered them to Tracy. The final disposition of this block of $500,000 of stock is relater further on, and in view of that disposition this change of beneficiary from the terminal company to the construction company is highly significant.

In addition to the formal contracts for the sale of their bonds and the guaranty thereof by Prince and Erb, the Toledo-St. Louis interests provided further safeguards for their large subscriptions to the C., H. & D. syndicate. First, by letter of May 19, 1904, they delivered the executed subscription agreements only under condition that payments thereon would not be made until the $3,500,000 of terminal company bonds and $150,000 of Toledo Riverside Railway Company bonds were sold at par and accrued interest and upon terms of delivery and payment satisfactory to them. Then, upon the delivery of the bonds to the United States Mortgage & Trust Company for final disposition, they issued instructions that the $3,300,000 to be purchased by Rudolph Kleybolte & Company, that firm having taken over the Prince contract, should not be delivered until paid for at the stated prices, and that eight thirty-thirds of the proceeds should be credited to the terminal company and twenty-five thirty-thirds to the Commonwealth Company. Finally, when they came to forwarding their payments for the first call on their subscriptions, they issued specific directions to their agent that such payments should not be made until the joint guaranty by the C., H. & D. and Pere Marquette had been placed on the Toledo Riverside and terminal company bonds to the satisfaction of Rudolph Kleybolte & Company, and until the latter had made the required initial payment on their purchase. Also, the Commonwealth Company received the joint and several

guaranty of Newman Erb, Jas. J. Robison, F. H. Prince, Thos. H. Tracy, L. B. Pierce, and E. Zimmerman that Rudolph Kleybolte & Company would pay, before July 15, 1904, such an amount on account of the purchase of terminal company bonds as would equal the first call on the Commonwealth Company's subscription, the guarantors agreeing to repay said installment in the event of the failure of Rudolph Kleybolte & Company to make such payment.

As stated in the body of this report, it was necessary that the C., H. & D. syndicate managers should have sufficient funds with which to make the first and second payments under the so-called vendors' agreement of May 28, 1904, in order that the entire syndicate plan should be consummated, for only thereby could they secure the voting rights of a majority of the stock of the C., H. & D., the resignation of a majority of its then board of directors, and the substitution of their own nominees. A few days before the date upon which the first call under the C., H. & D. syndicate became payable it was found that the funds from that call, together with loans from the United States Mortgage & Trust Company, and the proceeds of their sale of 10,000 shares of C., H. & D. preferred stock to Rudolph Kleybolte & Company, would still leave the syndicate managers some $600,000 short of the amount needed.

Failure of the C., H. & D. syndicate plan would have weighed heavily on the Toledo-St. Louis interests. Quite naturally, under the conditions described, they were requested to advance the amount of the shortage, the advance to be received as advance payments of installments on their subscriptions. This request was complied with in order that the new C., H. & D. board of directors could be elected, authorize the guaranty of the terminal company bonds and the execution of trackage contract with that company, and thereby enable the owners of said bonds to consummate their sale thereof, the prospective purchasers requiring guaranteed bonds. These advances brought the amounts to be paid on July 7, 1904, by the Toledo and St. Louis interests up to $552,500 each. The Commonwealth Company made its payment out of its share of the proceeds of the first block of bonds taken by the purchasers, but the terminal company made its payment from a loan from the United States Mortgage & Trust Company for $552,500 secured by $800,000 of its bonds which had been formally assigned back to it by the construction company in consideration of the terminal company subscribing to the syndicate on behalf of the latter. This loan, which, by the way, was never recorded on the books of the terminal company, was repaid from time to time, out of the proceeds of the bonds.

The actual sales and deliveries of the terminal company bonds were not made under the terms of the June 10 sales contracts previously described. During the closing days of the promoters' planning it was decided to have the bonds purchased direct from the three owners by the C., H. & D. and Pere Marquette, obviously to give a semblance of legality to the guaranty of principal and interest which was to be indorsed on those bonds by those roads. This new arrangement dictated the corporate action taken by the reorganized board of the C., H. & D. at its first meeting on July 7, 1904, after the C., H. & D. syndicate had assumed control, as related in detail in the body of this report. See page 102.

In that reorganization of the C., H. & D. board Thomas H. Tracy and James J. Robison became directors. In the voting on the purchase, guaranty, and sale of terminal company bonds and on the contracts for the use of its facilities by the Pere Marquette Tracy asked to be excused from voting. Robison voted in the affirmative. Both held interests in the construction company, a prime beneficiary of these corporate acts. That purchase and sale was never recorded in the books of account of either the C., H. & D. or the Pere Mar-

quette. In order to pass the bonds to the real purchaser resolutions were immediately adopted at this meeting authorizing the sale of the bonds at such prices as the officers should deem best. This resulted in a contract of even date, already prepared, with Rudolph Kleybolte & Company whereby $2,500,000 of the said bonds were sold at 97 and interest and $800,000 at 97½ and interest subject to the indorsement thereon by the sellers of their joint guaranty of principal and interest.

These $3,300,000 bonds were delivered and paid for between July 7 and October 12, 1904. During the same period the Toledo-St. Louis interests also received through Prince & Company $95,000, being the amount necessary to bring the sale price of the bonds to par and interest. This was paid under the Prince-Erb guaranty, *ante*, page 249, which was another of the inducements for the Toledo-St. Louis subscriptions to the C., H. & D. syndicate.

The profits on the $2,500,000 of bonds owned by the St. Louis syndicate were divided according to the contracts, i. e., each subscriber received profits of $25 per bond, except Altheimer & Rawlings Investment Company, the only cash subscriber, which received $100 profit per bond on its subscription for 100 bonds. The balance of profit, $75 per bond on $2,400,000, went to the Commonwealth Company. These subscribers' profits were not disbursed in cash, but were applied in partial payment of advances made on their several notes of June 24, 1904, given in connection with the subscription on their behalf to the C., H. & D. syndicate.

The profits on the $800,000 of bonds owned by the construction company apparently were merged with other funds of that company, no dividend being concurrently declared. As previously stated, the proceeds from its bonds were first applied to the liquidation of its note for $552,500 to the United States Mortgage & Trust Company.

On June 23, 1904, the stockholders of the terminal company ratified and confirmed all acts of the directors and officers which had resulted in the issuance and delivery of $3,500,000 of the company's capital stock, and $3,300,000 of its bonds. These latter had been issued under the mortgage to the Commonwealth Company of February 10, 1902. At meetings on July 2, 1904, the stockholders and board of directors authorized the issuance of $3,500,000 of the company's 4½ per cent 50-year bonds under a new mortgage to the Commonwealth Company, dated July 1, 1904. The new bonds were to replace the old, and, to facilitate the execution of the plan of sale, an interim bond was issued to the United States Mortgage & Trust Company against which it issued participation certificates representing the bonds to be delivered when engraved. The sale of $3,300,000 of bonds to Rudolph Kleybolte & Company left $200,000 in the hands of the Commonwealth Company belonging to the terminal company.

These remaining $200,000 of terminal company bonds were a part, as will be remembered, of the $500,000 reserved under the company's agreements for extensions and improvements only. Notwithstanding, the Commonwealth Company, in breach of its trust duty, permitted their issuance for other purposes to a great extent. In July, 1904, it released a block of $100,000, represented by a participation certificate, with express notice that they were to be used as collateral to a note given by the terminal company to raise funds with which to pay bond interest; a second lot of $100,000 in the same form it surrendered in September, 1904, to be pledged to raise funds to complete the passenger station and for improvements on the terminal company's property.

Only a portion of the proceeds of these bonds was expended for improvements, and information respecting use of the proceeds was not furnished to the Commonwealth Company until May 19, 1905, although the bonds were sold

above par in November and December, 1904. The statement of expenditures accounts for $199,982.64 of the proceeds, "the balance * * * was used in paying small bills and operating expenses." Included in the list are two items aggregating $108,444.80 for the payment of interest on all the outstanding bonds of this issue.

With their bonds disposed of at a substantial profit and the interest thereon provided for by the trackage contract the Toledo and St. Louis syndicates still had remaining $3,000,000 of terminal company stock, which is conclusively shown by the record to have been put out as bonus with the bonds, and not to represent a single dollar invested in the property.

Whether or not a sale of the terminal company stock had been promised by the promoters of the C., H. & D. syndicate in order to obtain the large subscriptions of the Toledo-St. Louis interests is undetermined by this record. It does appear, however, that on April 21, 1904, when the C., H. & D. syndicate operations were under way, though not definitely formulated, the Toledo-St. Louis interests agreed among themselves that the construction company might pay a commission of $10,000 if the stock was sold at $10 per share, and such proportion of any excess above that price as it might deem best. This same figure of $10 per share is mentioned also in correspondence of about that date concerning a certain "agent" who it was said would get that and perhaps more for the stock, and, it seems, went as high as $10.50 before the negotiations ended.

Who the "agent" was, or who the "proposed purchasers" were, does not appear, but it is noteworthy, in the light of subsequent events, that the best price named in April, 1904, was $10.50 per share, and also that the "agent's" commission was contingent upon his obtaining a better price for the stock.

The record shows no further action toward the sale of the stock until February 27, 1905, when Tracy wired Pierce from New York that he had had long negotiations with Eugene Zimmerman and H. B. Hollins & Company. He said:

> They started low and finally offered on behalf of C., H. & D. $1,450,000 upon condition that we subscribe for $500,000 in issue of C., H. & D. three and one-half year 4½ per cent notes secured by deposits of stock of the Toledo Railway & Terminal Company as collateral upon same terms as other underwriters.

These negotiations must be considered in the light of the fact that the control of the C., H. & D. and Pere Marquette had passed several months before from the C., H. & D. syndicate to H. B. Hollins & Company. They were successfully concluded on March 3, 1905, at a meeting in New York between Tracy, Eugene Zimmerman, H. B. Hollins, and the latter's partners, Rafael R. Govin and Bernard J. Burke. The results were embodied in a communication of that date from the construction company signed by Thos. H. Tracy, president, and addressed to Zimmerman as president of the Cincinnati, Hamilton & Dayton Railway Company. By its terms the construction company offered to sell to the C., H. & D., or to H. B. Hollins & Company, all of the Toledo Railway & Terminal Company shares owned by it (number not stated) at the price of $41 net, delivery to be made on the 15th day of April and the price to be paid in cash at that time. This offer was conditioned upon the privilege being given the St. Louis underwriters to put in their stock on the same terms. The communication was indorsed with a statement signed by Zimmerman as president of the C., H. & D., whereby he agreed on behalf of that company to accept the offer provided the stock was not purchased by H. B. Hollins & Company, his acceptance being subject to approval by the board of directors or the executive committee. This latter point was covered by a separate letter of the same date wherein H. B. Hollins & Company stated to Thos. H. Tracy, as president of the

construction company, that the former would recommend that the board of directors or executive committee of the C., H. & D. approve the purchase of the terminal company stock according to the proposition as described. In addition Tracy secured the "positive personal promise," to use his words, of all the other negotiators that the sale would be consummated.

The St. Louis underwriters had, by an agreement dated October 30, 1903, appointed a committee which they had empowered to sell their holdings of stock. This committee sanctioned the sale as arranged by Tracy.

The entire issue of $3,500,000 of terminal company stock was forwarded on April 12 to the National Bank of Commerce, New York City, in two packages, one containing 24,402.778 shares and the other containing 10,597.222 shares, representing the respective amounts stated to be owned by the construction company and the Commonwealth Company. It was paid for in cash on the 15th of April, when the companies were credited with the proceeds at the price of $41 per share, or $1,000,513.89 and $434,486.11, respectively.

In view of the fact that the Toledo-St. Louis interests received $41 per share for the stock, whereas later the C., H. & D. paid $42 per share plus interest therefor, it is quite significant that it was to H. B. Hollins & Company that the stock was delivered on April 15, 1905. This firm was then fiscal agents for both the C., H. & D. and Pere Marquette. The record shows that to raise funds to buy the stock that firm arranged with the North American Trust Company, the Trust Company of America, and the United States Mortgage & Trust Company for loans of $500,000 from each for the Pere Marquette, giving the latter's 60-day 5½ per cent notes therefor, dated April 15, redeemable at an earlier date if desired by the borrower, and secured by the terminal company stock. These notes were never recorded on the books of the Pere Marquette.

Up to this time there had been no corporate action by either road with respect to this purchase, and it was not until April 27, 1905, that the first steps were taken to authorize the same on behalf of those corporations. On that date the executive committee of the C., H. & D., Zimmerman, Cumming, Turnbull, and Wallace, with a representative of counsel, being present, considered a communication from Mr. Russell Harding, vice president of the company and also a member of the St. Louis syndicate, concerning the advisability of its acquisition of the capital stock of the terminal company. This letter bore the date of February 17, 1905, and was addressed to president Zimmerman. The copy spread upon the minutes of the C., H. & D. is not signed. In this letter, after reciting certain conditions relating to the terminal company, vice president Harding announced it as his opinion that it was decidedly to the advantage of both the C., H. & D. and the Pere Marquette to acquire control of that property through stock purchase. The committee thereupon voted its authorization for the purchase of the entire 35,000 shares of stock at the price of $42 per share and at the same meeting directed the president or vice president to transmit to the board of directors of the Pere Marquette a communication offering to sell the said shares to that company at $47 per share payable in cash. In this same communication an offer was made to the Pere Marquette to purchase such amount of its new refunding bonds as it might issue within the following six months, not exceeding $4,000,000, at the price of 90 and accrued interest. The Pere Marquette accepted these offers and ultimately took the stock on June 21, 1905, paying therefor the price of $47, aggregating $1,645,000, in cash. The details of the transaction as between the Pere Marquette and the C., H. & D. appear in the

body of this report. But it should be pointed out how it eventuated with the Pere Marquette. The purchase price to the latter of the terminal company's stock, $1,645,000, was set up on its books in June, 1905, as an investment and carried as such until August, 1908. By resolution of the board of directors at a meeting held August 18, 1908, this amount, together with $70,000, which had also been advanced to the terminal company to meet interest payments, was ordered to be charged to "road, franchises, and equipment" as "worthless accounts." This was the result of the foreclosure of the terminal company's mortgage, the entry being made in the accounts for June, 1908.

In their sale of the terminal company stock the Toledo–St. Louis interests paid a commission of $42,000 to a party whose identity the record does not disclose. The presence of Zimmerman and Hollins at the conference of March 3 at which the sale was consummated would indicate that their "combination" was interested in the transaction; to what extent they profited in the commission is not disclosed of record.

Of this $42,000 commission the St. Louis contingent paid $12,716.66, and this, with $13,478.12 of interest paid for the terminal company and $2,744.06 of miscellaneous expenses, reduced their profits from their 10,597.222 shares to $405,517.27. This latter amount was not disbursed in cash to the St. Louis underwriters but was applied in part repayment of advances made on their individual notes given by them in connection with their joint subscription for 6,500 shares of stock in the C., H. & D. common-stock syndicate. So also the profits of the Toledo interests were not all disbursed at this time. Their gross receipts were $1,000,513.89 from which evidently a dividend of $650,000 was paid, for the record shows that amount disbursed on April 22, 1905, to the parties of interest in the construction company.

It will be remembered that the last block, $500,000, of terminal company stock instead of being issued for the benefit of that company as Tracy had agreed with Pierce should be done, was in fact issued by the dummy directorate at Tracy's behest to the construction company, and placed in the name of a dummy trustee at the latter company's request. That trustee immediately indorsed the certificates in blank and delivered them to Tracy. This stock had been specifically reserved, by the terms of the underlying contracts, for the future betterment of the property and was not issuable except for "full reasonable value." While the minutes of the meeting at which its issuance was authorized are framed to indicate that this stock together with $300,000 of bonds was voted to the construction company in payment for work performed and material and equipment furnished outside the original construction contract, this record shows that such debts were paid in full by the bonds, and that the reason for issuing this stock was to raise the amount of issued stock to the level of the company's bonds, in order to remove doubt as to the legality of the latter under Ohio statutes.

Neither in the terminal company's records, nor in the voluminous record before us, is there anything indicating that for this $500,000 of stock the terminal company received "full reasonable value" or any other value. On the contrary, the evidence in this proceeding abundantly proves that when the sale of the terminal company stock to the C., H & D. was consummated the entire issue of $3,500,000 was delivered and paid for, and that the proceeds of this $500,000 block were divided between the Toledo and St. Louis interests in proportion to their then respective holdings of the $3,000,000 of stock issued as a bonus with the $3,000,000 of bonds under the construction contract. If the construction company had earned that $500,000 of stock it would not voluntarily

have surrendered a one-third interest. The construction company did not earn this stock. It divided the proceeds thereof with its St. Louis partner, whose consent was necessary to its issuance.

Worthy of the severest condemnation also is the manner in which this $3,500,000 of terminal company stock was unloaded originally on the C., H. & D. and then on the Pere Marquette. To fully appreciate this transaction it must be kept in mind, first, that those two roads were in the absolute control of H. B. Hollins & Company; second, that Hollins's immediate interest was in the C., H. & D.; and third, that this stock was worthless. Facts as to the first and second propositions are set out in the body of this report; as to the third, it may be repeated that, as $3,000,000 of the stock had been issued as a bonus and the remaining $500,000 had been misappropriated by those in control, not a cent was paid into the company's treasury or expended on its property as a result of the entire issue. But we may go further, for, far from being a dividend earner, the terminal company had failed even to earn its fixed charges. The C., H. & D. and Pere Marquette under their guaranty of the bonds had already advanced some $146,000 to pay bond interest. Both of these roads then had contracts granting them the unlimited use of the terminal company's facilities, and in purchasing the stock they simply bound themselves more tightly to responsibility for its deficits.

It is, of course, idle to search for reasons justifying this stock deal from the standpoint of railroading or from any other standpoint. The sale was negotiated for the sellers by Thomas H. Tracy, then general counsel and a director of both purchasers, but also interested in and prime mover of the Toledo syndicate. The purchase was earnestly urged before the executive committee of the C., H. & D. by Russell Harding, its vice president and a director, and also president and a director of the Pere Marquette, while holding an interest in the St. Louis syndicate. Another representative of the Toledo syndicate on the C., H. & D. board was James J. Robison. All three were beneficial owners of terminal company stock and profited directly by the sale.

In the final arrangements the owners received $41 per share in cash for their stock and paid $42,000 as "commissions." The price itself, under the conditions indicated, is so absurd as to brand this transaction as fraudulent. Who it was that received the $42,000 of "commissions" is not disclosed by the record before us. We have already noted that the Hollins firm was primarily interested through contract to purchase control of the C., H. & D. That fact adds color to the spectacle of these "fiscal agents" of the two purchasing carriers abstracting $35,000 of cash from those carriers by raising the price to $42 as the stock passed through their hands. What the purpose was of adding $5 per share to the price originally paid by the C., H. & D. when the latter sold at $47 to the Pere Marquette does not definitely appear, but this additional increase may also be explained by the immediate nature of Hollins's interest in the C., H. & D. as against the Pere Marquette.

Furthermore, we deem it quite pertinent that the price of this stock practically quadrupled in one year in the face of constant operating deficits. We refer now to the fact that in April, 1904, the Toledo-St. Louis people had evidently contemplated selling this stock at $10 per share, and paying a $10,000 commission. We do not overlook the point that during that year the terminal company's bonds had been guaranteed by the Pere Marquette and C., H. & D., for anything paid by those roads under that guaranty was to be represented

by cumulative preferred stock, which of course would have priority over the common.

Finally there is this: The Hollins people at about this time were becoming interested in the Detroit, Toledo & Ironton road, and contemplating its expansion at the expense of the C., H. & D., as related in the main report. One element of that expansion project was to put the Detroit, Toledo & Ironton into the Toledo water front, and the plan in that connection required property rights which then lay in the hands of the terminal company. The record warrants the view that the unloading of this worthless terminal company stock on the Pere Marquette was, primarily, at least, to enable Hollins to complete his Detroit, Toledo & Ironton undertakings.

The sale of their terminal company stock left the Toledo-St. Louis interests with their subscriptions to the C., H. & D. common-stock syndicate as the only thing outstanding in their speculation. It is related in the body of this report how H. B. Hollins & Company had been given the control of the C., H. & D., in consideration of their financing the retirement of its 5 per cent preferred stock. The St. Louis underwriters, by agreement dated September 16, 1904, had authorized the Commonwealth Company to enter into the option contract of August 16 on their behalf.

The option contracts expired December 15, 1904, without being exercised on the Toledo and St. Louis subscriptions. Thereupon negotiations were begun with the Hollins firm, resulting in new contracts under which the latter agreed to purchase St. Louis holdings at cost and interest, and to permit the Toledo subscription to be pooled with Hollins's other holdings. The Toledo and St. Louis interests concurrently entered into contracts between themselves whereby the profits from those two Hollins contracts would be equally divided between them.

The facts as to the sale in September, 1905, of the C., H. & D. stock controlled by H. B. Hollins & Company are set forth in the main report. The settlement by that firm with the St. Louis underwriters for their subscriptions for 6,500 shares was made on September 29, 1905, through the United States Mortgage & Trust Company. There were repaid to the underwriters their payments on calls of $365,625; a balance of $186,875 of advances to the syndicate managers; and interest thereon, $36,565.20, making an aggregate of $589,065.20. The settlement with the Toledo interests, made about the middle of October, was based on $160 per share for their 6,500 shares, less expenses of $8,125 and 5 per cent commissions, $32,500, leaving a balance of $999,375. The net profit on the 13,000 shares of C., H. & D. stock subscribed for by the Toledo and St. Louis interests was $106,795; and this was divided equally between them.

Thus the amount distributable to the St. Louis subscribers was $642,462. As those subscribers still owed a balance on their notes given to pay their subscriptions to C., H. & D. stock, said balance with interest was deducted before the final distribution was made. Several changes had occurred in the list of underwriters during the three and a half years covered by all the transactions here related. The amount finally disbursed as net profits represented, for each subscription of $90,000 in the St. Louis underwriting, a profit of $2,500 on the $100,000 of terminal company bonds underwritten; a profit of $13,393.24 on the 300 shares of terminal company stock received therewith; and a profit of $2,329.45 on each 220 shares of C., H. & D. stock subscribed for, making the final net profit $18,222.69. Participation in these profits was distributed by the Commonwealth Company, as follows:

Name	Amount.	Name.	Amount.
Chas. H. Turner	$10,872.44	Wm. D. Orthwein	$18,222.68
Lawrence B. Pierce	54,362.22	John E. Pilcher	18,222.69
L. B. Tebbetts	18,222.70	Russell Harding	18,222.69
Elias Michael	9,111.27	Altheimer & Rawlings Inv. Co	21,744.88
A. D. Brown	18,222.68	F. E. Marshall	9,111.27
Edward F. Goltra	18,222.70	William E. Morgan	6,074.23
Otto F. Stifel	18,222.69	Harvey L. Christie	6,074.23
T. W. Carter	36,445.28	P. Taylor Bryan	6,074.23
James T. Drummond	18,222.69	Wm. F. Nolker	9,111.29
Saml. C. Davis	21,744.88	Chas. A. Stix	4,555.65
B. W. Fordyce	43,691.23	Wm. Stix	4,555.66
R. M. Scruggs, estate	18,222.69	Jesse D. Dana	18,222.70
C. G. Knox	18,222.69	Commonwealth Trust Co	92,119.25
S. M. Dodd	18,222.69		
C. G. Warner	18,051.14	Total	572,371.44

But in addition to this net profit of $572,371.44 distributed to the individual underwriters, the Commonwealth Company, as a corporation, received $180,001.24 as its net profit in the sale of the terminal company bonds and $61,757.62 as its net profit in the sale of its own terminal company stock, besides its fee as trustee under the mortgage.

It should be remembered that with the exception of Altheimer & Rawlings Investment Company, none of the St. Louis subscribers had put up a dollar of money, and further, that the Commonwealth Company had otherwise received all the interest due on all its advances for construction, etc. Therefore the aggregate of $814,130 here shown represents sheer net profits.

The profits of the Toledo syndicate from the construction of the terminal property, the profits on the sale of bonds, proceeds from the sale of the stock and profits upon its subscription to the C., H. & D. syndicate, aggregated at least $1,482,500. That amount was disbursed to the members as dividends of the construction company on April 22 and October 24, 1905, December 20, 1906, and February 2, 1910, in the following sums:

D. Robison, jr., & Sons Co	$289,087.50
Edward Ford	289,087.50
John Cummings	207,550.00
Geo. G. Metzger	138,366.67
King & Tracy	69,183.33
William Hardee	207,550.00
James J. Robison	140,887.50
James J. Robison, trustee	140,887.50

Omitting profits on the subscriptions to the C., H. & D. syndicate, it is thus found that the Toledo-St. Louis interests divided profits of $2,190,000 on a property costing not more than $2,610,000.

APPENDIX 13.—*Statement showing sale prices of common stock of Pere Marquette Railroad Company on the New York and Boston exchanges.*

	New York stock exchange.		Boston stock exchange.	
	Lowest.	Highest.	Lowest.	Highest.
1901.				
January	33¾	43	30	44
February	41	65	[illegible]	67
March	56½	61½	54	60⅞
April	(1)	(1)	55	58
May	(1)	(1)	52	65½
June	53	75	54	75
July	74½	75	65	75
August	70½	70½	66	70
September	75	75	66	78
October	77½	85	71⅞	88
November	67½	94	82	96
December	86	86	79	84
1902.				
January	78	88	71	85½
February	71	79	70	79
March	(1)	(1)	70	75
April	73	76	72	77
May	73	73	68	72
June	71	71½	69½	70½
July	77	78	72	82
August	78	79	75	81
September	79½	85½	79	85½
October	80	82½	79	81½
November	80	88	70	83½
December	80	82½	80	74
1903.				
January	80	72	80	84
February	79	84½	80	83½
March	79	82	78½	82
April	78½	87⅞	75	85
May	86½	91½	85½	91
June	83½	87	84½	86
July	74	85½	74	85
August	74	79½	75	79½
September	76	77⅞	74	76
October	75	77⅞	74	77
November	75	81	75	76½
December	80	84	78½	80½
1904				
January	79	81⅞	78½	79½
February	75	78	75	80½
[illegible]	75	77⅞	75	78
[illegible]	75	78⅞	75	78
[illegible]	76	79⅞	77	79½
[illegible]	74½	77⅞	75½	78
[illegible]	77	78	74	78
[illegible]	(1)	(1)	74	74
[illegible]ber	(1)	(1)	74	74
[illegible]	73½	76½	75	76
[illegible]ber	70	75	74	75
[illegible]er	70½	76	75	76
1905.				
January	77	97⅞	79	98⅞
February	[illegible]	106	97½	103
March	101	101	99	100½
April	(1)	(1)	99½	100
May	(1)	(1)	99	99
June	100	100	98	99⅞
July	(1)	(1)	(1)	(1)
August	(1)	(1)	95	97½
September	99	101½	97½	101
October	101	101	101	101
November	(1)	(1)	(1)	(1)
December	(1)	(1)	(1)	(1)
1906.				
January	(1)	(1)	(1)	(1)
February	(1)	(1)	(1)	(1)
March	(1)	(1)	(1)	(1)
April	(1)	(1)	(1)	(1)
May	(1)	(1)	(1)	(1)
June	....	....	....	....

[1] No sale.

APPENDIX 14.

To the holders of 5 per cent preferred stock of the Cincinnati, Hamilton & Dayton Railway Company:

Acting on behalf of the holders of more than 20,000 shares of the 5 per cent preferred stock of the Cincinnati, Hamilton & Dayton Railway Company, we beg to announce that we have effected an arrangement for the adjustment of the differences that have arisen between the company and such preferred stockholders over the recent issue of securities of the company for the purpose of acquiring the controlling interest in the stock of the Pere Marquette Railroad Company. Under the terms of this arrangement, which has been negotiated for the equal benefit and protection of every holder, all of the 5 per cent preferred stock of the Cincinnati, Hamilton & Dayton Railway Company will be taken up at $110 per share. Stockholders desiring to avail themselves of the benefit of the arrangement are requested to deposit their certificates properly indorsed with P. J. Goodhart & Company, No. 326 Walnut street, Cincinnati, Ohio, on any day commencing August 30, 1904, and ending September 30, 1904, and will receive therefor from them in cash $110 per share, less a deduction of $2 per share to cover the expenses and services of the committee.

No stock will be taken after September 30, 1904.

Dated, Cincinnati, Ohio, August 17, 1904.

LAWRENCE MAXWELL, Jr.,
EDWARD L. HEINSHEIMER,
JOSEPH S. GRAYDON,
GEORGE B. COX,
Committee.

In the protracted negotiations which have resulted in the foregoing arrangement counsel for the holders of 5 per cent preferred stock has been confronted from the beginning with the claim that the stock was redeemable at par. In view of the embarrassment to the corporation and the loss to all classes of stockholders that would have resulted from litigation over this claim, and other controversies growing out of the issue of securities of the company in connection with its purchase of common stock of the Pere Marquette Railroad Company, I regard the amicable adjustment which has been made as advantageous to all parties, and have no hesitation in recommending it to the acceptance of the preferred stockholders. Preferred stockholders who do not deposit their stock before the expiration of the time limited in the foregoing arrangement must be prepared to meet the claim of the railway company that their stock is redeemable at par.

LAWRENCE MAXWELL, Jr., *Counsel.*

APPENDIX 15.—*Cincinnati, Hamilton & Dayton & Pere Marquette System.*

CAPITALIZATION	C. H. & D.	Pere Marq.	Total for System.
Voting Stock Outstanding: (##)			
Common Stock	$8,000,000		$8,000,000
Equipment bonds,	2,999,000	5,001,827	8,000,827
General Bonds (###)	47,482,000	$49,127,000	96,609,000
Total Bonds,	$50,481,000	$54,128,827	$104,609,827
FIXED CHARGES.			
Interest on Funded Debt	2,290,210	2,447,079	4,737,289
Taxes (est. on basis of last year's taxes)	274,500	416,000	690,500
Rental (tracks, yards, terminals,)	329,305	646,478	975,783
Rental divd Pere Marq. Stock,		578,765	578,765
Total,	$2,894,015	$4,088,322	$6,982,337
EARNINGS ESTIMATED FOR PRESENT YEAR:			
Gross Earnings,	9,500,000	14,500,000	24,000,000
Operating Expenses {CH&D 65%, P. M. 70%}	6,175,000	10,150,000	16,325,000
	$3,325,000	$4,350,000	$7,675,000

The C. H. & D. has taken up and paid for all of its preferred stock, excepting about 4,000 shares which are still outstanding, and there is now deposited with the Central Trust Co. of New York a sum sufficient to pay for this outstanding stock.

The total issued capital stock of the Pere Marquette Railroad is $12,000,000 preferred and $16,000,000 common, of which the C. H. & D. Railway Co. holds $1,487,800 preferred and $12,834,450 common, or a total of $14,322,250 out of $28,000,000 stock issued.

The C. H. & D. and P. M. have agreed to issue their joint collateral trust bonds for $3,500,000 with interest at 4% from July 1, 1905, in payments for the entire capital stock of the Chic., Cin. & Louisville R. R., which issue is not included in the above amount of General Bonds, as the C. C. & L. has not yet been taken over and as it is expected that the net earnings of this Company will be sufficient to take care of the interest on these bonds as well as on its own funded debt.

CONTINGENT LIABILITIES.		CH&D	Pere Marq. Bonds	Total for System. Annual Interest
Principal and Int. guaranteed by P. M. and C. H. & D. jointly on:				
Toledo Ry & Term. Co. 1st. Mtg. 4-1/2%			$3,500,000.00	$157,500.00
Toledo Riverside Ry. Co. " " 5%			150,000.00	7,500.00
Interest on Bonds of the C. C. & L. R. R. Co. guaranteed by C. H. & D. and P. M. jointly for 10 years from July 1st, 1904, or during life of Coll. Trust Bonds to be given in payment for C. C. & L. Stock,			6,520,000.00	312,120.00
Bonds of the Marq. & Bessemer Dock & Navigation Co. guaranteed jointly by the Pere Marq. and the Bessemer & Lake Erie R. R. Co., $500,000-1/2,			250,000.00	22,500.00
Total,			$10,420,000.00	$499,620.00
Mileage,		1,026.47	2,382.02	
Dayton & Union	47			
Cin., N. O. & T. P.,	337			
		384.00		3,792
General Bonds per mile,				$26,382
Capital Stock " " $2,348				2,348

Bonds Owned available for Improvements and Corporate Purposes:	
C. H. & D. Consolidated 4-1/2s, 1956:	
Available for Improvements and Corporate Purposes,	$10,000,000
C. H. & D. Refunding 4s, 1954:	
Available for Improvements,	1,477,000
Cinc. & Dayton 1st 4-1/2s, Held in Treasury,	275,000
Cinc., Ind. & West. 1st 4s, " " "	50,000
	$11,802,000
P. M. Refunding 4s, 1955:	
Reserved for Corporate Purposes,	5,245,000
TOTAL BONDS,	$17,047,000
Stocks Owned which can be sold at Par for Improvements:	
Pere Marquette Stock owned by CH&D, Pfd. par value,	1,487,800
Com " "	12,834,450
Southwestern Construction Co. stock, " "	750,100

No. 7000.

A. L. GREENBERG IRON COMPANY

v.

CHICAGO & EASTERN ILLINOIS RAILROAD COMPANY ET AL.

Submitted November 11, 1916. Decided April 10, 1917.

Former findings that the rates on galvanized corrugated sheet-steel culverts in carloads from Terre Haute, Ind., to Texas points were not shown to be unreasonable or unjustly discriminatory, affirmed on rehearing. Complaint dismissed.

James F. Dougherty for complainant.

C. B. Cardy for Chicago & Eastern Illinois Railroad Company and St. Louis & San Francisco Railroad Company and receivers.

Robert W. Fyfe for western classification lines.

REPORT OF THE COMMISSION ON REHEARING.

BY THE COMMISSION:

Our original report herein appears in 38 I. C. C., 38. The complaint alleged that the charges collected by defendants for the transportation of certain carloads of galvanized corrugated sheet-steel culverts, set up, from Terre Haute, Ind., to Texas points during 1912 and 1913, were unreasonable and unjustly discriminatory. Reparation was asked. No commodity rates applied. The western classification, which governed, rated and rates corrugated sheet-steel culverts, set up, in carloads, minimum 20,000 pounds, subject to rule 6-B, fourth class. At the time of movement the fourth-class rate was $1.06 per 100

pounds. A commodity rate of 69 cents per 100 pounds, minimum 36,000 pounds, contemporaneously applied on sheet-iron pipe 30 inches or less in diameter. Complainant contended that the charges on corrugated sheet-steel culverts should not reasonably exceed the charges on sheet-iron pipe, but that the class rates should be charged where lower charges result. We found that the rates charged were not shown to be unreasonable or unjustly discriminatory, and an order dismissing the complaint was entered. On April 28, 1916, the case was reopened at complainant's request for further hearing solely upon the question of the propriety for the future of the application on galvanized corrugated sheet-steel culverts of all sizes, in carloads, from Terre Haute to Texas common points, of the rates charged upon the shipments involved in this proceeding. Rehearing has been had, and the case is now before us on the whole record. Rates are stated in cents per 100 pounds.

On rehearing some evidence was adduced with respect to the rates on corrugated sheet-steel culverts, hereinafter called culverts, as compared with the rates on cast-iron pipe. When the shipments in question moved the rate on cast-iron pipe from Terre Haute to Texas common points was 45 cents, minimum 36,000 pounds for pipe 18 inches or under in diameter and 30,000 pounds for pipe over 18 inches. A witness for complainant testified that complainant's Texas business had fallen off from 20 to 30 per cent in the last two years and that he thought this was due to competition with cast-iron pipe. His information with respect to such competition was based upon reports of sales agents in Texas made in response to inquiries as to why certain orders for culverts had not been secured. Although this witness had been in complainant's employ for about six years he had no definite knowledge of the location of any competing manufacturer of cast-iron pipe. Apparently there is no movement of cast-iron pipe from Terre Haute to Texas points. At the original hearing it was stated on behalf of complainant that it was not asking for protection of the rates on cast-iron pipe. Cast-iron pipe is usually thicker than culverts. It weighs more per linear foot, loads much more heavily, and moves in greater volume. The facts submitted do not establish that culverts are unjustly discriminated against because of the lower rate on cast-iron pipe.

Complainant concedes that there is no competition between steel pipe and culverts, but contends that it is unreasonable to charge a higher rate on the latter commodity than on the former. The weight per linear foot of steel pipe is much greater than that of culverts of corresponding sizes, and the pipe loads much more heavily. The average loading of complainant's shipments to Texas was stated to be from 16,000 to 22,000 pounds. These shipments are of mixed

sizes and unless an extra long car, upon which three lengths can be placed, is used, they can not be loaded to 36,000 pounds. Gondola cars and cars longer than the standard 36-foot car are generally used. Steel pipe will easily load to 36,000 pounds in a standard car, and shipments weighing from 50,000 to 80,000 pounds are not unusual. In *Classification of Address Plates*, 33 I. C. C., 281, we found justified a proposed change in southern classification rating on culverts in carloads from sixth class, minimum 24,000 pounds, to fifth class, minimum 20,000 pounds. In official classification the minimum is 24,000 pounds, subject to rule 27.

It was testified by the chairman of the Western Classification Committee that culverts were taken from under the general heading of pipe and pipe fittings, and that the present descriptions and minimum weights were written in accordance with the recommendations of culvert manufacturers, who appeared before the Western Classification Committee a number of times.

We find upon all the facts now before us that our previous findings were not erroneous and they are, therefore, affirmed. An order dismissing the complaint will be entered.

HALL, *Chairman*, dissents.

No. 8048.

SKALLERUP BROTHERS

v.

ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY ET AL.

Submitted November 24, 1916. Decided April 10, 1917.

Charges collected on a carload of potatoes from Holt, Cal., to Chicago, Ill., not found to have been based on an erroneous weight. Complaint dismissed.

Charles C. Foster for complainant.

D. L. Meyers for Atchison, Topeka & Santa Fe Railway Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is Chris H. Skallerup, engaged in the potato business at Chicago, Ill., under the trade name of Skallerup Brothers. By complaint. filed May 24, 1915, he alleges that the charges collected by defendants for the transportation of a carload of potatoes from Holt, Cal., to Chicago, in July, 1914, were unreasonable in that they were computed on the basis of an excessive weight. Reparation is asked.

The shipment consisted of 270 sacks of potatoes. Charges were collected at a rate of 75 cents per 100 pounds on 32,600 pounds, the weight registered by the track scales of the Atchison, Topeka & Santa Fe Railway at Stockton, Cal., a point 7 miles east of Holt.

Complainant alleged that the actual weight of the shipment was 30,100 pounds, but the only evidence adduced consists of the invoice. Defendants insist that the track scales at Stockton are frequently inspected and that they were in good order at the time the shipment was weighed.

The evidence does not justify a finding that the weight on which the charges involved were collected was erroneous, and the complaint will be dismissed.

No. 1023.

BUFFALO UNION FURNACE COMPANY ET AL.

v.

LAKE SHORE & MICHIGAN SOUTHERN RAILWAY COMPANY ET AL.

Submitted December 10, 1915. Decided April 9, 1917.

Upon further hearing with respect to the question of reparation for switching services performed by the Buffalo Union Terminal Railroad, the plant facility of the Buffalo Union Furnace Company, *Held:*

1. Finding of undue prejudice in the original report, 21 I. C. C., 620, in favor of the Cleveland Furnace Company affirmed and made to include certain other furnace companies.
2. Reparation awarded upon the basis of the cost of the interchange switching service performed by the Buffalo Union Terminal Railroad.

Hoyt, Dustin, Kelly, McKeehan & Andrews, A. C. Dustin, and *Horace Andrews* for complainants.

Ira W. Gantt for Grand Trunk Railway system.

George Stuart Patterson, Clyde Brown, H. A. Taylor, J. L. Seager, E. S. Ballard, and *Stewart G. Pratt* for defendants.

SUPPLEMENTAL REPORT OF THE COMMISSION.

McCHORD, *Commissioner:*

The further hearing of this case, which was originally reported in 21 I. C. C., 620, involves the determination of the amount of reparation to be awarded for the service of switching cars from and to the plant of complainant, Buffalo Union Furnace Company, performed by its industrial railway, the Buffalo Union Terminal Railroad Company, which is also a complainant. In the original report we held that the defendant carriers had unduly preferred the Cleveland Furnace Company, located at Cleveland, Ohio, by making allowances to the Cuyahoga Valley Railroad Company, its plant facility, for switching and spotting services, while refusing such allowances to complainant railroad company, thereby subjecting complainant furnace company to undue prejudice, in violation of section 3 of the act. The defendants were required to cease and desist from such violation, and the case was held open for further hearing upon the question of reparation. An order entered under date of December 6, 1911, postponed indefinitely the order requiring the removal of

the undue prejudice pending our investigation in Docket No. 4181, the *Industrial Railways Case*, and allowed the complainants to proceed to present their proofs of the amount of reparation which should be awarded. Reports have been handed down in the investigation referred to, 29 I. C. C., 212, and 32 I. C. C., 129, but a final order has not yet been issued in this proceeding.

The finding of undue prejudice to the complainant furnace company upon the facts stated in the original report is hereby affirmed, not only as to the Cleveland Furnace Company, but also as to the various other furnace companies throughout these districts which received allowances or free spotting.

The record shows clearly that the practice of making such allowances to blast furnaces and steel plants was an established custom and usage, not only within the Buffalo switching district, Lackawanna and Cleveland, but extending through that industrial region. Complainants have been made the exception to this rule. The record discloses no explanation for this flagrant exception. We find that the discrimination in favor of the Cleveland Furnace Company and others was continued from August 1, 1905, until April 1, 1914, when the carriers voluntarily withdrew their tariffs providing for an allowance on switching performed by the Cuyahoga Valley Railway Company and others. No order for the future based upon the finding of discrimination is deemed necessary. We are here concerned solely with the question of the amount of reparation due, based on our previous finding of undue prejudice.

This case was set down for further hearing in May, 1915, at which time the parties stipulated that the allowances to the Cuyahoga Valley Railroad Company had been continued until April 1, 1914; that certain evidence and exhibits submitted in the *Industrial Railways Case* be made a part of the record herein; and that, generally speaking, the spotting of cars without charge by the trunk line carriers at points in the Pittsburgh and Mahoning and Shenango Valley districts had been continued up to the date of the hearing. Tariffs proposing to make a charge therefor were then under suspension in Investigation and Suspension Docket No. 435, *Car Spotting Charges*. With respect to their demand for an allowance the following additional evidence was submitted by the complainants: At a meeting of the Buffalo Freight Committee in February or March, 1906, representatives of practically all of the railroads entering Buffalo and officers of complainants were present. The latter called attention to the fact that the complainant railroad was spotting cars for the furnace company; that the defendants were making allowances to certain furnace companies for like work and for certain other furnace companies were doing the work themselves, and asked that a similar

allowance be made to them. The committee replied to this demand under date of March 29, 1906, as follows:

The matter was duly considered at a meeting of the roads in the Buffalo Freight Committee on the 27th instant, and it has appeared, on thoroughly looking into the subject in conjunction with the operating officials of the respective roads, that the Buffalo Union Terminal Railroad was not doing any work for the Buffalo roads that would otherwise be performed by themselves; the conclusion was reached that the Buffalo Freight Committee had no ground upon which to recommend the granting of the application for the switching allowance in question.

The carriers contend that no reparation should be awarded because it was testified by one of complainants' witnesses that it would be uneconomical, undesirable, and impracticable for the line-haul carriers to switch within the plant. This contention is without merit, as the record shows that the same conditions existed at the plant of the Cleveland Furnace Company.

The question is raised whether shipments which moved during the period from April 1, 1907, to and including December 1, 1909, are barred by the statute of limitations. The complaint, filed April 3, 1907, prays that the defendants be required to reimburse the furnace company in the amounts paid by it to the terminal company for transferring and switching "since the 1st day of August, A. D. 1905, which sums are as follows, to wit: * * * ." This is followed by a statement setting forth the number of cars handled by each defendant and the amount of reparation claimed. We think that the general prayer for reparation contained in the complaint is sufficient to toll the statute as to all shipments on which reparation is claimed. The specific prayer for reparation merely sets forth the amounts demanded from the various defendants on shipments which had moved prior to the filing of the complaint.

The carriers rely in large measure upon the contention that the complainants have failed to prove damages, under the decision of the Supreme Court in *Penna. R. R. Co.* v. *International Coal Co.*, 230 U. S., 184. In that case the Supreme Court held that the fact that shipments were made at a discriminatory rate did not, as a matter of legal right itself, entitle the complainant to an award of reparation based upon and measured by the difference between the published rate paid by the complaining shipper and the lower rate extended to a favored shipper in the form of a rebate. The court said, pages 197 and 200:

But although this suit was brought to enforce a cause of action given by this section (section 8) to any person injured, it is a noticeable fact that in its pleading the plaintiff does not claim to have been damaged, and there is neither allegation nor proof that it suffered any injury. * * * Before any party can recover under the act he must show not merely the wrong of the carrier, but that that wrong has in fact operated to his injury. * * * It is exceed-

ingly doubtful whether there was at common law any right of action for any sort of damages in a case like this, while this statute does give a clear, definite, and positive right to recover for unjust discrimination.

In the instant case no rebate is involved; the pleadings sufficiently allege damages arising out of the unlawful discrimination which we have found to exist; and there is sufficient evidence to prove that the wrong of the carrier has in fact operated to complainants' injury.

The furnace company was in competition with the Lackawanna Steel Company, the Cleveland Furnace Company, and many other iron manufacturers located in western Pennsylvania and eastern Ohio. There was competition between these manufacturers in the purchase of coal, coke, limestone, iron ore, and various other materials. Other furnaces in the Buffalo-Black Rock switching district received their raw materials at the same line-haul rate, and the cars consigned to certain of these furnaces were spotted by the trunk lines or allowances for spotting were made to the industrial roads. The transportation charges paid by the furnace company were higher than those paid by its competitors for a service substantially similar in all respects. Complainant furnace company and these competing furnaces were engaged in manufacturing the same kinds of iron, which were sold in the same competitive markets. 21 I. C. C., 625. It was forced to meet and did meet the prices at which its competitors sold. Under such circumstances it was impossible to add the cost of performing the terminal switching to the selling price of such products. In consequence complainant was compelled to absorb that cost out of its profits. It inevitably follows that the complainant furnace company suffered a loss in profits measured by the cost of that interchange switching service, and we find that it was damaged to the extent of such cost.

There remains for consideration the determination of the amount of damages proven, having in mind that a reasonable allowance, if voluntarily made by the carrier, would be the cost of the service to the industry, or not greater than the approximate cost of that service to the carrier; and that any greater allowance would savor of a rebate. *Chicago, West Pullman & Southern R. R. Co. Case*, 37 I. C. C., 408, 414. The parties have entered into a stipulation as to the number of cars handled by complainant terminal railroad. The total number of cars which complainants' statements of operations show were interchanged during the entire period was 162,524, of which 46,745 were handled to or from Buffalo on rates of less than 50 cents per ton, leaving 115,779 on which the claim for reparation was based. Complainants have further reduced their claim to the number of cars which the carriers were able and willing to stipulate had been interchanged to 85,915. The effect of the stipulations is an abandonment upon the part of complainant of its claim

covering 29,864 cars. The allowances to the Cuyahoga Valley Railroad Company at the different periods involved herein were as follows:

(1) $1.50 per car of raw materials inbound, between August 1, 1905, and July 1, 1906;

(2) $2.50 per car of finished products outbound, between August 1, 1905, and July 1, 1906;

(3) $2.50 per loaded car inbound or outbound, between July 1, 1906, and March 31, 1914.

Limited at all times, however, to cars upon which charges were paid at a rate of 50 cents per ton or more.

The stipulations as to the number of cars handled were prepared upon this basis.

The record also contains statements filed as exhibits, showing the expenses and receipts of the terminal railroad for the periods of August 1, 1905, to June 30, 1906; July 1, 1906, to December 31, 1906; January 1 to December 31 for the years 1907 to 1913, inclusive; and January 1 to March 31, 1914. There is also shown the total number of cars switched or spotted by the terminal railroad to points of delivery and from points of loading at the plant of the furnace company from or to the main sidetracks of connecting line-haul carriers, which traffic moved in interstate commerce beyond the switching limits of Buffalo at a freight rate of 50 cents or more per ton. These statements are uniform, and the one covering the year 1907 will suffice to explain our method of arriving at the cost of operation.

Statement of cost and revenue of operating the Buffalo Union Terminal Railroad Company from January 1 to December 31, 1907.

EXPENSES.

Item No.		
1.	Superintendents, foreman, clerks, and timekeepers	$4,377.08
2.	Producing labor	29,809.14
3.	Locomotive and car repairs	11,844.30
4.	Track and yard maintenance	8,323.25
5.	Lubricants	537.86
6.	Tools and miscellaneous supplies	1,216.71
7.	Water	371.69
8.	Fuel	10,178.59
9.	General expense	2,497.16
10.	Office expense	2,795.21
11.	Locomotive hire	1,178.98
12.	Rent	9,999.94
13.	Taxes	1,200.00
	Total	84,329.91

RECEIPTS.

15.	Interest	290.84
16.	From the Niagara Cement Company et al. for switching 2,221 cars at $2.50 per car	5,552.50

17. From the Empire Lime Company for switching 3 cars at $1 per car	$3.00
18. From the Buffalo Union Furnace Company on internal movement of 53,918 cars at 75 cents each	40,438.00
19. From the Buffalo Union Furnace Company on their inbound and outbound cars	38,116.07
Total	84,329.91

There were handled inbound and outbound for the furnace company an aggregate of 19,229 cars, of which 13,630 moved at a freight rate of 50 cents per ton or more.

Items 1 to 11, inclusive, appear proper and not excessive. The plant of the furnace company occupies about 25 acres of land, which is leased upon a sliding scale at a rental averaging approximately $78,000 per year. The directors of the furnace company charge the terminal railroad about $10,000 per year for rent, this amount including not only right of way but also cars and locomotives. Item 12 must be eliminated, following the principle that where a private siding owned by an industry is used by a carrier in spotting cars billed to and switching cars from that industry no allowance is made to the industry by the carrier for the use of the private siding; and for the reason that no division is made showing the proportion properly applicable to the interchange movement. For the latter reason item 13 should also be eliminated.

In item 18 the internal movements for the furnace company are shown as 53,918 cars at 75 cents, or $40,438, which it must stand. While 75 cents is an arbitrary charge for such a movement, it is based upon the judgment of the terminal railroad's officers from actual experience, taking into consideration the short length of movement and the number of cars handled.

After eliminating the items "rent" and "taxes," the cost of the interchange movement is derived as follows:

Average cost per car apportioned to aggregate interchange movement performed for the line-haul carriers by periods.

Period.	Cost of interchange movement.	Number of cars; aggregate interchange.	Average cost per car allowed.	Average cost per car as claimed.
Aug. 1, 1905, to June 30, 1906	$26,717.40	20,458	$1.306	$1.89
July 1, 1906, to Dec. 31, 1906	16,628.66	10,296	1.615	2.159
Year 1907	26,916.13	19,229	1.40	1.982
Year 1908	14,404.71	13,661	1.054	1.876
Year 1909	36,161.07	18,017	2.007	2.629
Year 1910	40,842.77	19,186	2.129	2.717
Year 1911	25,129.78	18,547	1.356	1.96
Year 1912	28,628.20	20,396	1.40	1.959
Year 1913	38,512.60	19,100	2.016	2.61
Jan. 1 to Mar. 31, 1914	7,344.30	3,636	2.02	2.79
Total	261,285.62	[1] 162,526		

[1] Includes the 46,746 cars interchanged but handled at a rate to or from Buffalo of less than 50 cents per ton.

The number of cars switched by the terminal railroad from or to the point of loading or delivery within the plant of the furnace company are stipulated and agreed upon by months and years, beginning August 1, 1905, and ending March 31, 1914. The stipulations also show the number of cars of raw materials which moved August 1, 1905, to June 30, 1906, and the number of cars of finished products moved within the same period; and cover, throughout that time, and up to March 31, 1914, only the cars upon which the rate of freight paid was 50 cents per ton or more. The average cost of operation has been applied to the agreed and stipulated number of cars, and the results are shown in the following table:

Period.	The Delaware, Lackawanna & Western Railroad Company.		Erie Railroad Company.		Grand Trunk Railway Company of Canada.		Lehigh Valley Railroad Company.	
	Number cars.	Amount of reparation.	Number cars.	Amount of reparation.	Number cars.	Amount of reparation.	Number cars.	Amount of reparation.
Aug. 1, 1905, to June 30, 1906:								
Average per car, $1.306; raw material	3	$3.92	96	$125.38	0	$0.00	1	$1.31
Average per car, $1.306; finished products	55	71.83	742	969.05	127	165.86	65	84.89
July 1, 1906, to Dec. 31, 1906: Average per car, $1.615	17	27.45	749	1,209.63	59	95.28	14	22.61
1907, average, $1.40	71	99.40	1,064	1,489.60	43	60.20	10	14.00
1908, average, $1.054	18	18.97	709	747.29	128	134.91	163	171.80
1909, average, $2.007	44	88.31	826	1,657.78	82	164.57	125	250.88
1910, average, $2.129	56	119.22	1,185	2,522.87	26	55.35	65	138.39
1911, average, $1.355	317	429.54	1,474	1,997.27	65	88.08	76	102.98
1912, average, $1.40	118	165.20	2,000	2,800.00	244	341.60	65	91.00
1913, average, $2.016	338	681.41	5,118	10,317.89	351	707.61	51	102.82
Jan. 1, 1914, to Mar. 31, 1914: Average, $2.02	197	397.94	1,463	2,955.26	22	44.44	19	38.38
Total	1,234	2,103.19	15,426	26,792.02	1,147	1,857.90	654	1,019.06

Period.	The Lake Shore & Michigan Southern Railway Company.		Michigan Central Railroad Company.		The New York Central & Hudson River Railroad Company.	
	Number cars.	Amount of reparation.	Number cars.	Amount of reparation.	Number cars.	Amount of reparation.
Aug. 1, 1905, to June 30, 1906:						
Average per car, $1.306; raw material	1,885	$2,461.81	67	$87.50	0	$0.00
Average per car, $1.306; finished products	486	634.72	49	63.99	3,578	4,672.87
July 1, 1906, to Dec. 31, 1906: Average per car, $1.615	2,284	3,688.66	35	56.53	1,359	2,194.79
1907, average, $1.40	3,511	4,915.40	92	128.80	2,684	3,757.60
1908, average, $1.064	1,063	1,130.40	18	18.97	1,965	2,071.11
1909, average, $2.007	993	1,992.95	117	234.82	2,872	5,764.10
1910, average, $2.129	1,294	2,754.98	99	210.77	2,935	6,248.61
1911, average, $1.355	1,627	2,204.59	298	403.79	2,713	3,676.11
1912, average, $1.40	2,052	2,872.80	519	726.60	2,258	3,161.20
1913, average, $2.016	1,538	3,100.61	273	550.37	2,210	4,455.36
Jan. 1, 1914, to Mar. 31, 1914: Average, $2.02	200	404.00	10	20.20	517	1,044.34
Total	16,933	26,150.87	1,577	2,502.34	28,091	37,046.09

Period.	The New York, Chicago & St. Louis Railroad Company.		The Pennsylvania Railroad Company.		Total.	
	Number cars.	Amount of reparation.	Number cars.	Amount of reparation.	Number cars.	Amount of reparation.
Aug. 1, 1905, to June 30, 1906:						
Average per car, $1.306; raw material..	11	$14.37	1,913	$2,498.38	3,976	$5,192.67
Average per car, $1.306; finished products....	26	33.96	33	43.10	5,161	6,740.27
July 1, 1906, to Dec. 31, 1906: Average per car, $1.615....	59	95.29	1,137	1,836.26	5,713	9,226.50
1907, average, $1.40....	83	116.20	2,537	3,551.80	10,095	14,133.00
1908, average, $1.054....	74	78.00	4,563	4,809.40	8,701	9,170.85
1909, average, $2.007....	196	393.37	5,767	11,574.37	11,022	22,121.15
1910, average, $2.129....	68	144.77	2,552	5,433.21	8,280	17,628.12
1911, average, $1.355....	54	73.17	409	554.19	7,033	9,529.72
1912, average, $1.40....	47	65.80	2,922	4,090.80	10,225	14,315.00
1913, average, $2.016....	47	94.75	3,194	6,439.10	13,120	26,449.92
Jan. 1, 1914, to Mar. 31, 1914: Average, $2.02.	22	44.44	139	280.78	2,589	5,229.78
Total....	687	1,154.12	25,166	41,111.39	85,915	139,736.98

From August 1, 1905, to June 30, 1906, raw materials and finished products were being switched for the Cleveland Furnace Company at $1.50 and $2.50 per car, respectively, but as the cost of this service to the terminal railroad during this period, shown in the first horizontal column, was $1.306 per car, that average cost is applied to cars of raw material and finished products alike. The vertical columns show the total amount of reparation due from each carrier.

Upon all the facts of record we are of the opinion and find that complainant Buffalo Union Furnace Company made the shipments as described, and paid and bore the cost of the interchange switching service performed by its plant facility, the Buffalo Union Terminal Railroad Company, which cost of service, being in addition to the rates for the line-haul movements, is herein found to have been unduly prejudicial; that it has been damaged to the extent that the cost of service herein found reasonable exceeded the charges that would have accrued thereon at the rates for the line hauls; and that it is entitled to reparation in the sums set forth in the above table, with interest. An order will be entered requiring the defendants to pay to the complainant furnace company the amounts shown in the table above, with interest calculated upon the amount stated for each period at 6 per cent per annum from the day following the close of that period.

HARLAN, *Commissioner*, dissents.

Investigation and Suspension Docket No. 968.

LUMBER TO TEXAS PORTS.

Submitted February 12, 1917. Decided April 9, 1917.

Proposed readjustment of rates on lumber and articles taking lumber rates from points in Louisiana and Texas on lines of respondents to Texas ports for export or coastwise movement found justified.

J. A. Brown and *W. M. Hough* for Beaumont, Sour Lake & Western Railway Company; Orange & Northwestern Railway Company; and New Orleans, Texas & Mexico Railway Company.

F. R. Dalzell for Gulf, Colorado & Santa Fe Railway Company.

Chas. A. Bland for Beaumont Chamber of Commerce.

H. S. L'Hommedieu for Orange Board of Trade.

Report of the Commission.

HALL, *Chairman:*

By tariff filed to become effective November 18, 1916, the New Orleans, Texas & Mexico Railway Company, and other Gulf Coast lines, together with the Kansas City Southern Railway Company, the St. Louis, Iron Mountain & Southern Railway Company, and several short connecting carriers, proposed rates on lumber and articles taking lumber rates from points in Texas and Louisiana on their lines to Beaumont, Galveston, Orange, Port Arthur, Port Bolivar, Sabine, and Texas City, Tex., when for export or coastwise movement beyond the state of Texas.

Upon protest by the Beaumont Chamber of Commerce, hereinafter termed protestant, we suspended operation of the tariff until September 18, 1917, pending investigation. The Orange Board of Trade was permitted to intervene. Rates are stated in cents per 100 pounds.

The protest was against certain rates included in two items of the tariff. Item No. 5 named a rate of 6 cents from specified stations in Texas, and No. 10 rates of 7 cents from one group and 6 cents from another group of stations in Louisiana, to Beaumont and to Orange when for such movement beyond. These rates were designated in the tariff as being reductions from the rates then in effect. Protestant contended that they were increases. Our consideration will be restricted to these items.

After suspension of the tariff but before its effective date respondents issued a corrected tariff purporting to cancel that under suspen-

sion. This was rejected under our order which prohibits changes in rates while under suspension pending investigation. They now propose, in lieu of the suspended tariff, to issue the corrected tariff with certain modifications of the rates under suspension. The contemplated readjustment is satisfactory to the Orange Board of Trade and would be satisfactory to the protestant if the rates applied to ship side.

Beaumont has recently become a port of transshipment by completion in January, 1916, of a deep-water channel. Prior to the issuance of the tariff under suspension no rates to Beaumont for export or coastwise movement had been published. Orange became a port of transshipment at the same time as Beaumont. The tariff under suspension was published primarily to provide rates for the large movement of lumber to Orange for export. To place the ports on a parity equal rates were published to Beaumont for prospective movements of lumber for export.

It is now proposed to publish rates from certain mills to Beaumont and to Orange which will reduce to 5 cents the 6-cent rate now under suspension on lumber and articles taking lumber rates, and increase the rates on pine logs and squared timbers from 4 cents to 5 cents.

The New Orleans, Texas & Mexico Railway admitted that the rates on lumber from its Louisiana mills to Beaumont, for local delivery, were lower than the rates proposed in the tariff under suspension, but stated that they were to be advanced in harmony with increases made within the year to Houston and Galveston, Tex.

As previously indicated, the protestant would approve the contemplated adjustment if the rates applied to ship side. Switching charges at both Orange and Beaumont are absorbed on competitive traffic and are not absorbed on noncompetitive traffic. Practically all of the points of origin are competitive.

The protestant introduced no evidence. Its position is that Beaumont should be on a rate parity with Orange. It appears that there will be such equality in so far as line-haul rates are concerned. Any difference in the amount of traffic upon which switching charges are assessed is due to the proportion moving to each port from noncompetitive points and to the different terminal facilities at the ports. The situation regarding switching charges is one which is not wholly within the compass of this proceeding, protestant admitting that when the lines serving Beaumont construct a line there to ship side the disadvantage will be eliminated. The representative of the Orange Board of Trade stated that in a short time, when the new municipal terminals at that port were completed, a larger proportion of the shipments exported through Orange would be assessed switching charges. The question can not be determined on the issue and record before us.

Upon the whole record we are of opinion and find that the adjustment proposed at the hearing has been justified and should be permitted to become effective. In order to avoid confusion our order will require the cancellation of the suspended tariff. Respondents may publish, effective upon not less than five days' notice in the manner prescribed in section 6 of the act, rates in conformity with these views.

INVESTIGATION AND SUSPENSION DOCKET No. 951.

HELENA-THEBES LUMBER.

Submitted January 27, 1917. Decided April 2, 1917.

Proposed cancellation of a tariff note providing that rates on lumber from Helena, Ark., will be made on the basis of 1 cent per 100 pounds higher than the contemporaneous rates on the same commodity from Memphis found not justified.

Henry G. Herbel for respondent.

M. W. Martin for protestants.

REPORT OF THE COMMISSION.

HARLAN, *Commissioner:*

This proceeding grows out of a tariff filed by the St. Louis, Iron Mountain & Southern Railway, in which it is proposed to cancel a note carried in a current tariff to the effect that rates on lumber from Helena, in the state of Arkansas, will be made on the basis of 1 cent per 100 pounds higher than the rates contemporaneously maintained on the same commodity from Memphis.

The protestants are interested in the proportional rate from Helena to Thebes, in the state of Illinois, this rate being applicable on shipments to points beyond Thebes to which the protestants ship, including points in the central freight association and western trunk line territories. The proportional rate now applicable from Memphis to Thebes is 8 cents on shipments to all points beyond Thebes, except points in the western trunk line territory, to which it is 7 cents. The proportional rates from Helena to Thebes applicable on shipments to destination points in the two territories mentioned would therefore be 9 cents and 8 cents respectively. If the note in question be canceled there would be applicable from Helena to Thebes, for use in

constructing through rates to points in either of these territories, to which there may be no joint rates in effect, only the local rate of 11 cents.

In *Southeastern Lumber*, 42 I. C. C., 548, we held that the respondents had justified the joint rates therein proposed from Helena to practically all points in the western trunk line territory. At the present time there are in effect from Helena to practically all points in the central freight association territory joint rates made on the basis of a maximum of 1 cent over the rate contemporaneously applied from Memphis. Because of these facts the respondent contends that the objection raised to the cancellation of the note is technical rather than practical, for inasmuch as the joint rates to final destinations are on the basis desired there is in its opinion no necessity for the maintenance also of proportional rates to Thebes on that basis.

The view of the protestants is that there may be points in western trunk line and central freight association territories, especially the former, to which through inadvertence joint rates may not be published, and that so long as a proportional rate is maintained from Memphis to Thebes, in addition to the joint through rates from Memphis to points beyond Thebes, there would seem to be no good reason why the note in question should not likewise be retained. As the proportional rate from Memphis to Thebes contains no restrictions as to destinations beyond, except as to points in the western trunk line territory, it is apparent that instances may arise in which, through omission to publish joint rates to points beyond Thebes, the proportional rate would be available to the Memphis shippers while the local rate of 11 cents would be assessed against the Helena shippers.

Apparently no injustice can be done the respondent by requiring it to retain the note in its tariff. The respondent is satisfied to continue to maintain the proportional rate from Memphis to Thebes, and its principal reason for desiring to discontinue the present relationship between Helena and Memphis is that other Arkansas points may demand a similar relationship between their rates and the rates from Memphis or Helena. These apprehensions afford, in our opinion, no sufficient justification for the cancellation of the note. Should such a contention actually arise it can be dealt with on its merits.

We conclude and find upon all the facts that the respondent has not justified the proposed cancellation of the note in question. An order requiring its continuance in the tariff will be entered.

No. 8688.

PIERCE OIL CORPORATION

v.

MISSOURI, KANSAS & TEXAS RAILWAY COMPANY ET AL.

Submitted October 26, 1916. Decided April 9, 1917.

Increased rate of 20 cents per 100 pounds on petroleum and its products from producing and refining points in Kansas and Oklahoma to St. Louis, Mo., published as result of decision in *Midcontinent Oil Rates*, 36 I. C. C., 109, found to be just and reasonable. Complaint dismissed.

John S. Burchmore and *Luther M. Walter* for complainant.

C. D. Chamberlin for National Petroleum Association.

H. J. Birmingham for Cudahy Refining Company.

L. F. Moore for various Oklahoma refineries.

C. S. Burg, *T. J. Norton*, *Thomas Bond*, *H. G. Herbel*, and *Fred G. Wright* for defendants.

REPORT OF THE COMMISSION.

HARLAN, *Commissioner:*

This proceeding is the direct outgrowth of our findings in *Midcontinent Oil Rates*, 36 I. C. C., 109, in which there were under consideration the carload rates on petroleum and its products from producing and refining points in the states of Kansas and Oklahoma to all the important consuming markets in western trunk line and trans-Missouri territories. It was there found, among other things, that the then existing rate to St. Louis of 17 cents per 100 pounds was out of line with other rates on that traffic in the same territory and that 20 cents would be a just and reasonable rate for the future. Against the tariffs that were subsequently filed naming the latter rate on petroleum and on its products, other than certain low-grade products, such as fuel oil, road oil, tailings, etc., the complainant protested on the ground that the rate was unjust, unreasonable, and unjustly discriminatory to the extent that it exceeded the former rate of 17 cents. A suspension order being refused, the petition was thereupon so amended as to stand as a formal complaint, coupled with a prayer for reparation on all shipments moving after February 28, 1916, when the increased rate became effective. This is the complaint before us here. In an intervening petition of certain refining com-

panies it is alleged that the increased rate of 20 cents is unjust and unreasonable to the extent that it exceeds 15 cents per 100 pounds, and reparation on that basis is demanded. Various other refining interests appeared at the hearing but took no part in the proceedings beyond indicating of record their interest in the complainant's contentions.

The investigation of the oil rates in this territory in *Midcontinent Oil Rates*, *supra*, was the culmination of many complaints that had been made against the existing rates and relation of rates from the midcontinent field to various markets. In instituting the investigation other cases previously considered and decided were reopened by the Commission and consolidated with it in order that a comprehensive review upon one record might be made of the entire rate situation. The rates to many markets besides St. Louis were considered during the hearings that followed, and it was conceded by practically all the parties in interest that, as a whole, the rates on petroleum oil and its products in the territory in question were not properly adjusted but were in need of realignment. An exhaustive record was made, practically all the refiners and shippers of petroleum and its products being represented at the hearings. The readjustment subsequently proposed by the carriers to give effect to the findings announced by the Commission was considered in a conference between the carriers, the shippers, and the Commission, and was finally permitted by the Commission to go into effect as being in substantial conformity with its findings.

Among the many matters considered in that investigation was the contention by some of the refiners that the 17-cent rate then in effect to St. Louis was a proper rate, and the allegation by other refiners that it was too high and should not exceed 15 cents. Both these contentions are before us again upon this record. To a considerable extent, therefore, this case is but a rehearing of contentions urged upon us in the former proceeding, and the record now before us largely covers ground that was there fully examined. Testimony was offered in this proceeding to show that the 17-cent rate formerly in effect to St. Louis was voluntarily established; that the volume of the traffic had materially increased; that the shippers for the most part furnished the cars used in the carriage of petroleum; that the mileage allowance, of three-fourths of a cent, to the car owner is substantially less than the cost of furnishing the car, and less than the expense incurred by the carriers in the ownership, maintenance, and operation of their own cars; that the carriers do not furnish loading or unloading facilities; and that oil is a low-grade traffic attended by practically no risk and results in few damage claims, and

that it loads heavily. These matters were extensively dealt with by testimony in the previous case and are referred to in the report.

The development of the midcontinent field and the circumstances and conditions surrounding the carriage of petroleum and its products to the various markets in the territory in question were discussed at length in the report in the previous case and need not be repeated here. It there appeared, as it does here, that more oil is shipped to and through St. Louis than to and through any other gateway in that territory. It also appeared that the average distance to St. Louis from all the producing and refining points in Kansas and Oklahoma is 412 miles. For this distance the rate of 20 cents, approved in the previous case, yields ton-mile earnings of 9.7 mills. A comparison of these earnings with the earnings under rates to other markets established as a result of our findings in that case is much relied upon here by the defendant carriers in support of the reasonableness of the present St. Louis rate, many of the rates so established representing reductions from rates formerly in effect. The distances and earnings under these rates to typical points, taken from exhibits offered in evidence by the defendants, are shown upon the following table:

Rates in cents per 100 pounds; distances in miles; ton-mile earnings in mills.

	Oklahoma group.			Kansas group.		
	Distance.	Rate.	Ton-mile earnings.	Distance.	Rate.	Ton-mile earnings.
Chicago, Ill	704	25	7.10	606	25	8.25
Des Moines, Iowa	475	22.5	9.47	370	20	10.81
Dubuque, Iowa	668	23.5	7.04	561	23.5	8.38
Galesburg, Ill	533	22.5	8.44	425	22.5	10.59
Hannibal, Mo	426	20	9.39	335	20	11.94
Joliet, Ill	666	25	7.50	566	25	8.83
Kansas City, Mo	251	15	11.95	150	10	13.33
La Crosse, Wis	788	30	7.61	681	30	8.81
Lincoln, Nebr	438	23	10.50	336	20	11.90
Milwaukee, Wis	773	30	7.76	666	30	9.01
Omaha, Nebr	449	23	10.25	344	20	11.63
Peoria, Ill	582	22.5	7.73	497	22.5	9.05
Quincy, Ill	462	20	8.66	369	20	10.84
Racine, Wis	761	30	7.88	654	30	9.17
St. Paul, Minn	744	31	8.33	637	31	9.73
Salt Lake City, Utah	1,282	90	14.04	1,190	90	15.13
Sioux City, Iowa	544	28	10.29	439	25	11.39
Springfield, Ill	524	22.5	8.59	441	22.5	10.20
Sedalia, Mo	316	20	12.65	198	18.4	18.59
New Orleans, La	750	33	8.80	806	35	8.68
Average	607	27.8	9.20	514	27.0	10.81

The defendants also call attention to the rates prescribed by the Commission in other cases on petroleum and its products between points in the same general territory. A rate of 17 cents for 279 miles, yielding 12.19 mills per ton-mile, was prescribed in *Marshall Oil Co.* v. *C. G. W. R. R. Co.*, 28 I. C. C., 707; a rate of 23 cents for

323 miles, yielding ton-mile earnings of 14.24 mills, was required in *Merchants Freight Bureau* v. *M. P. Ry. Co.*, 21 I. C. C., 573; a rate of 24.3 cents for 493 miles, yielding 9.86 mills per ton-mile, was fixed by the Commission in *National Petroleum Asso.* v. *C., M. & St. P. Ry. Co.*, 14 I. C. C., 287; and a rate of 20.5 cents for 292 miles, yielding 14.04 mills per ton-mile, was ordered in *Mutual Oil Co.* v. *A., T. & S. F. Ry. Co.*, 38 I. C. C., 591. All these rates represent reductions from the rates under attack in those cases. In *National Refining Co.* v. *M. P. Ry. Co.*, 24 I. C. C., 315, a rate of 33.1 cents for 493 miles, yielding 13.43 mills per ton-mile, was held not to be unjust or unreasonable; and in *National Petroleum Asso.* v. *A., T. & S. F. Ry. Co.*, unreported, the increased rates of 38 and 35 cents for distances of 654 and 827 miles, respectively, and yielding 11.62 and 8.46 mills per ton-mile, were held to have been justified.

The defendants also offered in evidence exhibits comparing the average ton-mile earnings and average car-mile earnings under the rate here in issue with the earnings under rates on various commodities, other than petroleum and its products, moving to St. Louis from Coffeyville, taken as a representative Kansas point, and from Sand Springs, a representative Oklahoma point. But in the absence of any evidence of the similarity of the circumstances and conditions surrounding the other traffic, these comparisons are not particularly helpful.

As before stated, it was the Commission's purpose in instituting its inquiry in *Midcontinent Oil Rates*, *supra*, to examine the whole adjustment of rates on this traffic, a number of cases already decided being reopened in order that there might be entire freedom of action upon the record made. With respect to such an investigation it was there said (id., p. 113) that—

> The rates to particular points must not only be reasonable, but must bear a proper relation to the rates to other points, or groups of points, in order that the structure shall constitute a just, reasonable, and harmonious whole.

In undertaking to realign such a rate structure care must be taken to see that the rates prescribed shall be relatively reasonable; and with that thought in mind the 20-cent rate to St. Louis was prescribed with some relation to the rates fixed to the other consuming markets, and the rates to these other destinations were fixed with some relation to the rate so required to St. Louis. Nevertheless, conflicting views developed during this hearing as to whether a reduction in the 20-cent rate to St. Louis would necessarily cause a reduction in the rates to other markets and gateways. Obviously that would be the case. Many important points in the state of Missouri that are directly intermediate to St. Louis would be entitled to a reduction. This would be true also as to points in the territory beyond to which the

rates make on St. Louis. There are a number of points also that are differentially or otherwise related to St. Louis to which reductions would follow as a matter of course. With respect to the rates to such destinations, the complainant asserts, however, that "the Commission's duty in each case is to inquire into the reasonableness and justness of the rate under immediate consideration," and "to consider the other rates only with a view of determining the possible effect of granting the relief sought."

In connection with the complainant's contention here that petroleum is a low-grade commodity, it should be stated that since the date of our report in *Midcontinent Oil Rates*, *supra*, the market price both of crude petroleum, from which all the high-grade oils are made, and of gasoline, a representative product of petroleum, have increased over 100 per cent. In May, 1915, crude oil was selling at the well for 40 cents a barrel, while in May, 1916, it was selling at $1.55 a barrel, with a premium of 60 cents a barrel for what is known as "Cushing crude." During approximately the same period the price of gasoline in the St. Louis wholesale market advanced from 8.9 cents to 17.9 cents a gallon; and the assistant general manager of the complainant left of record a very clear inference that this level of prices will probably continue, a fact of some significance, value always being an element of importance when considering a rate. With respect to the point reiterated here that the carriage of petroleum is not attended by risk, it will suffice to refer to what is said in a report announced since the date of the report in *Midcontinent Oil Rates*, *supra*, in which the National Petroleum Association, one of the interveners in this case, was the complainant. *National Petroleum Asso.* v. *A., T. & S. F. Ry. Co.*, 38 I. C. C., 65, 67, 68.

In support of their allegation that the present 20-cent rate to St. Louis is unjust and unreasonable the complainant introduced numerous exhibits comparing the earnings under that rate and under the former rate of 17 cents with the average earnings of the defendants on all carload freight and on representative commodities. Much testimony on this point was offered in the previous proceeding; but in the figures submitted, as there stated (id., p. 116), no consideration was given to the fact that there is always a return empty movement of the tank cars. In the exhibits offered in this case the return empty movement is included in the comparisons, and the complainant still insists that the 20-cent rate is shown to be too high, at least to the extent that it exceeds the former rate of 17 cents. In the previous case 50,000 pounds was found to be the average loading of oil, but the complainant in its exhibits here uses 52,000 pounds as the average loading. Taking 6.6 pounds per gallon as the weight of the oil, 50,000 pounds as a fair average loading, 17.5 tons as the average

weight of the car, and 412 miles as the average haul from the midcontinent field to St. Louis, the revenue per gross ton-mile loaded and empty under the present 20-cent rate is 0.405 cents, while under the former 17-cent rate it would be 0.344 cents. In the *1915 Western Rate Advance Case*, 35 I. C. C., 497, 587, the average revenue per gross ton-mile loaded and empty on six representative western lines, including the Santa Fe, the Frisco, and the Missouri, Kansas & Texas, leading lines in the midcontinent oil traffic, was found to be 0.377 cents on all carload freight, 0.43 cents on grain, 0.336 cents on live stock, 0.38 cents on packing-house products, and 0.302 cents on bituminous coal. The general figure of 0.377 cents on all traffic was obtained by using 44.26 per cent as the average ratio of empty to loaded miles, which, of course, was increased by the fact that the average ratio in the oil traffic was probably 100 per cent. The ratio on grain was shown at 27 per cent, on live stock at 79 per cent, on packing-house products at 70 per cent, and on bituminous coal at 89 per cent. With respect to bituminous coal an increase of rates was permitted in that case; and the present level of all interstate rates on live stock and packing-house products in western territory is the subject of a general investigation. It should be borne in mind also that the average earnings upon all carload freight and upon the representative commodities referred to include earnings under state rates and upon divisions of through rates. While the average short-line distance, from the midcontinent field to St. Louis, is considerably greater than the average haul on all carload freight and on the commodities referred to, the former, as must not be overlooked, is the average of one, two, and three line hauls, while the latter is the average of single-line hauls.

The complainant also offered in evidence comparisons contrasting the 20-cent petroleum rate to St. Louis with the rates to St. Louis on lumber, cement, coal, hay, salt, live stock, and grain from the same general territory. Some of these comparisons were made in the previous case, and with respect to the others the record does not show that the circumstances and conditions surrounding their movement are similar or substantially similar to the conditions surrounding the petroleum traffic. The same criticism must be made of the exhibits in which the 20-cent rate is compared with rates on petroleum from other fields to St. Louis and other markets.

In the previous proceeding it was shown that the Standard Oil Company has a refinery at Wood River, in the state of Illinois near St. Louis, which is connected with the midcontinent field by a pipe line owned and operated by that company. The pipe line carries the crude oil from the midcontinent field to Wood River at a published rate of 34 cents a barrel, or approximately 10 cents per 100 pounds,

and the refined oil is shipped to St. Louis from Wood River in tank cars under a 2.6-cent rate per 100 pounds. The actual cost of the pipe-line movement is said of record to be between 3 and 4 cents per 100 pounds. The tariffs also limit the 34-cent rate to a minimum shipment of 100,000 barrels, a requirement which, the complainant states, has the effect of preventing independent shippers from using the pipe line; and being also compelled to ship their refined products to St. Louis by rail, they compete in that market at a great disadvantage. This situation is referred to in our report in the *Midcontinent Oil Rates*, *supra*, and undoubtedly has some bearing upon the competition in that market of the independent interests with the Standard Oil Company; but if the railroads do not feel that they can undertake in their rates to meet these conditions the Commission should not compel them to do so by forcing upon them rates that are less than reasonable for the service they perform. It may be observed, however, that the record before us indicates that the volume of the shipments from the independent refineries to St. Louis and beyond has not decreased since the increased rate of 20 cents went into effect.

The realignment of rates on this traffic from the midcontinent field was permitted by the Commission to go into effect, as heretofore stated, after a conference between the rail lines, the shippers, and the Commission following the report in the *Midcontinent Oil Rates*, *supra*. Experience under it may develop defects that should be corrected. But the 20-cent rate to St. Louis, which is here complained of, has not been shown to be an unreasonable rate, nor could it be reduced without requiring a readjustment of rates at least to a number of points to which rates have been fixed in the previous proceeding after a careful study of the whole rate situation.

Upon a full examination of all the facts brought to our attention upon the record we conclude and find that the rate of 20 cents here under attack is a just and reasonable rate. The complaint must therefore be dismissed, and it will be so ordered.

105781°—17—VOL 44——20

No. 8894.

WILLIAM CAMERON & COMPANY

v.

ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY ET AL.

PORTIONS OF FOURTH SECTION APPLICATIONS Nos. 618, 623, 627, AND 630.

Submitted February 9, 1917. Decided April 9, 1917.

Upon complaint that the carload rates and minima on sash, doors, and other millwork from Fort Worth and Waco, Tex., to points in the state of Oklahoma were and are unreasonable and unduly prejudicial; *Held,* That the evidence shows the rates complained of were and are unreasonable. Reasonable maximum rates prescribed for the future and reparation awarded.

H. D. Driscoll and *G. H. Zimmerman* for complainant.

W. V. Hardie for Oklahoma Traffic Association and Curtis-Booth-Bentley Company, interveners.

Thomas Bond and *Robert N. Nash* for St. Louis & San Francisco Railway Company and St. Louis, San Francisco & Texas Railway Company.

Drew Head for Atchison, Topeka & Santa Fe Railway Company; Gulf, Colorado & Santa Fe Railway Company, and others.

M. J. Dowlin for Chicago, Rock Island & Pacific Railway Company and receiver.

Report of the Commission.

Meyer, *Commissioner:*

Complainant owns and operates a sash and door factory at Waco, Tex., and a branch factory and jobbing house at Fort Worth, Tex. It alleges that the carload rates and minima on sash, doors, and other building material, listed in item No. 1 of Leland's I. C. C. No. 1105 and hereinafter collectively referred to as millwork, from Waco and Fort Worth to points in Oklahoma are unjust and unreasonable and unduly prejudicial as compared with rates in the reverse direction. Complainant also alleges that the rates from Texas to Oklahoma points violate the long-and-short-haul clause of the fourth section of the act, and asks reparation on past shipments. Portions

of applications for relief from the provisions of the fourth section were set down for hearing with this case.

To many points in Oklahoma no joint through rates were published from Waco and Fort Worth at the time this complaint was brought. Joint through rates have, however, subsequently been established. Rates will hereinafter be stated in cents per 100 pounds.

At the hearing the Oklahoma Traffic Association and the Curtis-Booth-Bentley Company intervened. The latter owns and operates sash and door factories at Oklahoma City and Okmulgee, Okla. The interveners were among the complainants in *Oklahoma Traffic Asso. v. A. & S. Ry. Co.*, 36 I. C. C., 329, in which case we prescribed maximum rates of 17.5 cents on millwork in carloads from Oklahoma City and Okmulgee to all points in Dallas-Fort Worth territory, as defined for like traffic from Kansas City and related points; 21.5 cents from Oklahoma City and Okmulgee to Texas common-point territory; and class D differentials higher to Texas differential territory. Rates to conform with the finding and order in that case were published effective January 31, 1916, with a carload minimum weight of 26,000 pounds, and are still in effect. The object of the present complaint is to secure an adjustment of northbound rates which will be in harmony with the southbound rates made effective in compliance with the report above referred to.

Complainant's principal competitors are the interveners above referred to and millworking plants located at Wichita Falls, Tex., and Coffeyville and Wichita, Kans.

Fort Worth is located about 65 miles from the Oklahoma state line, nearly due south of the center of the state, and is reached by five railroads which lead direct to points of destination in Oklahoma. Waco is 87 miles south of Fort Worth and is served by two railroads which lead direct to points in Oklahoma. Oklahoma City is located 128 miles north of the Texas state line and is reached by four railroads which extend direct to Texas. Okmulgee is about 155 miles from the Texas state line and is a local point on the St. Louis & San Francisco. The average distance of the two Oklahoma cities from the Texas state line is 141 miles and the average distance of the two Texas cities from the Oklahoma state line is 109 miles.

The present carload rate on millwork from Waco and Fort Worth to the larger part of Oklahoma is 27 cents, minimum weight 30,000 pounds. Throughout the southwest millwork generally is charged rates 3 cents higher than on lumber between the same points. The 27-cent rate above referred to is in conformity with this practice. The lumber rate from the southwestern pine blanket, which includes Waco and Fort Worth, to Kansas City is 24 cents and is carried as a maximum to most Oklahoma points. There are some rates higher

than 27 cents from Waco and Fort Worth to Oklahoma points not intermediate to Kansas City and to certain points lower rates are in effect. The Chicago, Rock Island & Pacific maintains a rate of 17.5 cents on millwork from Fort Worth to certain Oklahoma destinations on its line, which is lower than the general adjustment. The Wichita Falls & Northwestern maintains a rate of 11.5 cents from Wichita Falls, Tex., to Trail, Okla., a distance of 181 miles, with higher rates for greater distances up to 18.5 cents to Forgan, Okla., 304 miles from Wichita Falls.

Sash and doors and other articles included under "millwork" are rated fifth class in the western classification, but southwestern lines' exceptions to the classification rate them class D. There is no territory in the southwest to which fifth-class rates are applied on sash and doors in carloads.

Complainant contends that a reasonable and nondiscriminatory adjustment from Waco and Fort Worth will be reached if the rates to all Oklahoma points included within the territory bounded by the heavy line on the map shown on page 291 are made 17.5 cents, carload minimum 26,000 pounds, and 21 cents with the same carload minimum to other Oklahoma points. This would carry the 17.5-cent rate as far north as Westville, Claremore, Tulsa, Pawnee, Enid, Clinton, and Elk City.

The following table, submitted by complainant, gives the present and proposed rates from Waco and Fort Worth to numerous points in Oklahoma, the average distances, and the averages of the class D rates from Waco and Fort Worth to the same points; the yield per ton-mile under present rates and the rates proposed by complainant, and the yield per car-mile at the prevailing carload minimum of 30,000 pounds for present rates and a carload minimum of 26,000 pounds for proposed rates:

From Waco and Fort Worth to Oklahoma points.	Miles.	Present.				Proposed.		
		Rate.	Revenue per ton-mile.	Revenue per car-mile, 30,000 pounds.	Class D rate.	Rate.	Revenue per ton-mile.	Revenue per car-mile, 26,000 pounds.
Points to which complainant proposes a rate of 17.5 cents:		*Cents.*	*Cents.*	*Cents.*	*Cents.*	*Cents.*	*Cents.*	*Cents.*
Altus	235	28	2.38	35.74	26.5	17.5	1.48	19.36
Elk City	294	28	1.90	28.57	29.5	17.5	1.19	15.47
Clinton	309	28	1.81	27.18	29	17.5	1.13	14.72
Enid	316	27	1.70	25.63	30	17.5	1.10	14.39
Pawnee	327	27	1.65	24.77	29.5	17.5	1.07	13.91
Tulsa	349	27	1.54	23.20	30	17.5	1	13.03
Claremore	341	26	1.52	22.87	31.5	17.5	1.02	13.34
Westville	369	23.5	1.27	19.10	31.5	17.5	.94	12.33
Bokoshe	306	26	1.69	25.49	30	17.5	1.14	14.86
McAlester	234	26	2.22	33.33	24.5	17.5	1.49	19.44
Atoka	193	23	2.69	40.41	22.5	17.5	1.81	23.57
Durant	159	26	3.27	46.54	29.5	17.5	2.20	28.61
Hugo	193	26	2.69	40.41	23.5	17.5	1.81	23.57

From Waco and Fort Worth to Oklahoma points.	Miles.	Present.				Proposed.		
		Rate.	Revenue per ton-mile.	Revenue per car-mile, 30,000 pounds.	Class D rate.	Rate.	Revenue per ton-mile.	Revenue per car-mile, 26,000 pounds.
Points to which complainant proposes a rate of 17.5 cents—Con.		*Cents.*	*Cents.*	*Cents.*	*Cents.*	*Cents.*	*Cents.*	*Cents.*
Ada	228	27	2.36	35.52	26	17.5	1.53	19.96
Holdenville	256	27	2.10	31.64	26	17.5	1.36	17.77
Okmulgee	308	27	1.75	26.29	29	17.5	1.13	14.77
Cushing	295	27	1.83	27.45	28	17.5	1.18	15.42
Shawnee	247	27	2.18	32.79	26	17.5	1.41	18.42
Pauls Valley	193	27	2.79	41.96	23.5	17.5	1.81	23.57
Ardmore	149	26	3.49	52.34	20	17.5	2.34	30.53
Waurika	158	21.5	2.72	40.82	21.5	17.5	2.21	28.79
Lawton	198	24.75	2.50	37.50	24	17.5	1.76	22.97
Chickasha	221	23.5	2.12	31.90	24.5	17.5	1.58	20.58
Oklahoma City	250	27	2.16	32.40	26	17.5	1.40	18
Bridgeport	271	28	2.06	30.99	27.5	17.5	1.29	16.78
Muskogee	298	26	1.74	26.17	27.5	17.5	1.17	15.26
Henryetta	294	27	1.83	27.55	28.5	17.5	1.19	15.47
Madill	174	26	2.98	44.82	25.5	17.5	2	26.14
Guthrie	280	27	1.92	28.92	25	17.5	1.25	16.25
Totals	7,445	763.25	....	....	765	507.5	....	....
Average	257	26.3	2.08	30.70	26.3	17.5	1.36	17.70
Points to which complainant proposes a rate of 21 cents:[1]								
Hollis	269	29	2.15	32.34	28.5	21.5	1.59	20.78
Sayre	352	28	1.59	23.86	31	21.5	1.22	15.88
Gage	401	32	1.59	23.94	33	21.5	1.07	13.94
Forgan	464	35	1.50	22.62	37.5	21.5	.94	12.04
Byron	375	30	1.60	24	33	21.5	1.14	13.30
Medford	346	29	1.67	25.14	31	21.5	1.24	16.15
Newkirk	358	28	1.56	23.46	30.5	21.5	1.20	15.61
Dewey	382	27	1.41	21.20	32.5	21.5	1.12	14.63
Miami	387	26	1.34	20.15	32	21.5	1.11	14.44
Woodward	378	32	1.69	25.39	33	21.5	1.13	14.78
Cherokee	380	28	1.47	22.10	30.5	21.5	1.13	14.71
Breckenridge	324	27	1.65	25	31	21.5	1.32	17.25
Nelagony	358	27	1.50	22.62	32.5	21.5	1.20	15.67
Vinita	362	26	1.43	21.54	30.5	21.5	1.18	15.44
Totals	5,136	404	....	....	446.5	301	....	....
Average	367	28.8	1.54	23.54	31.8	21.5	1.17	15.23
Grand totals	12,581	1,167.25	....	....	1,211.5	808.5	....	....
Grand average	292	27.1	1.85	27.84	28.1	18.8	1.28	16.67

[1] Exhibits show a proposed rate of 21.5 cents, but 21 cents was requested upon the hearing and in briefs.

It will be observed that the average of the present rates is exactly the same as the average of class D rates from Waco and Fort Worth to destinations in the first group, and somewhat lower than the average of class D rates to destinations in the second group. The average of the rates proposed by complainant is of course considerably lower to each group. The average car-mile earnings under the present rates and under the rates proposed by complainant are 30.7 cents and 17.7 cents, respectively, for the first group and 23.54 cents and 15.23 cents, respectively, for the second group. The average car-mile earnings for all the points shown are 27.84 cents under present rates and 16.67 cents under proposed rates.

With the car-mile earnings referred to above complainant compares average earnings of 16.38 cents per car-mile received on all

traffic, for the year ended June 30, 1915, by 15 carriers in southwestern territory, including those that serve Fort Worth, Waco, and the Oklahoma cities. The average loading of cars shipped by complainant to Oklahoma points, on which reparation is asked, was 32,000 pounds. The average car loading of complainant's shipments during the last six months of 1915 was 28,000 pounds. Had either of these averages been used instead of the carload minima of 30,000 and 26,000 pounds, respectively, for the present rates and the rates proposed by complainant, the car-mile earnings shown in the above table would have been somewhat different. Average car-mile earnings under present and proposed rates for all the points shown in the table would have been 29.7 and 20.6 cents, respectively, computed on the basis of an average car loading of 32,000 pounds, instead of 27.84 and 16.67 cents as shown above, and 25.99 and 18.03 cents, respectively, when computed on the basis of an average car loading of 28,000 pounds.

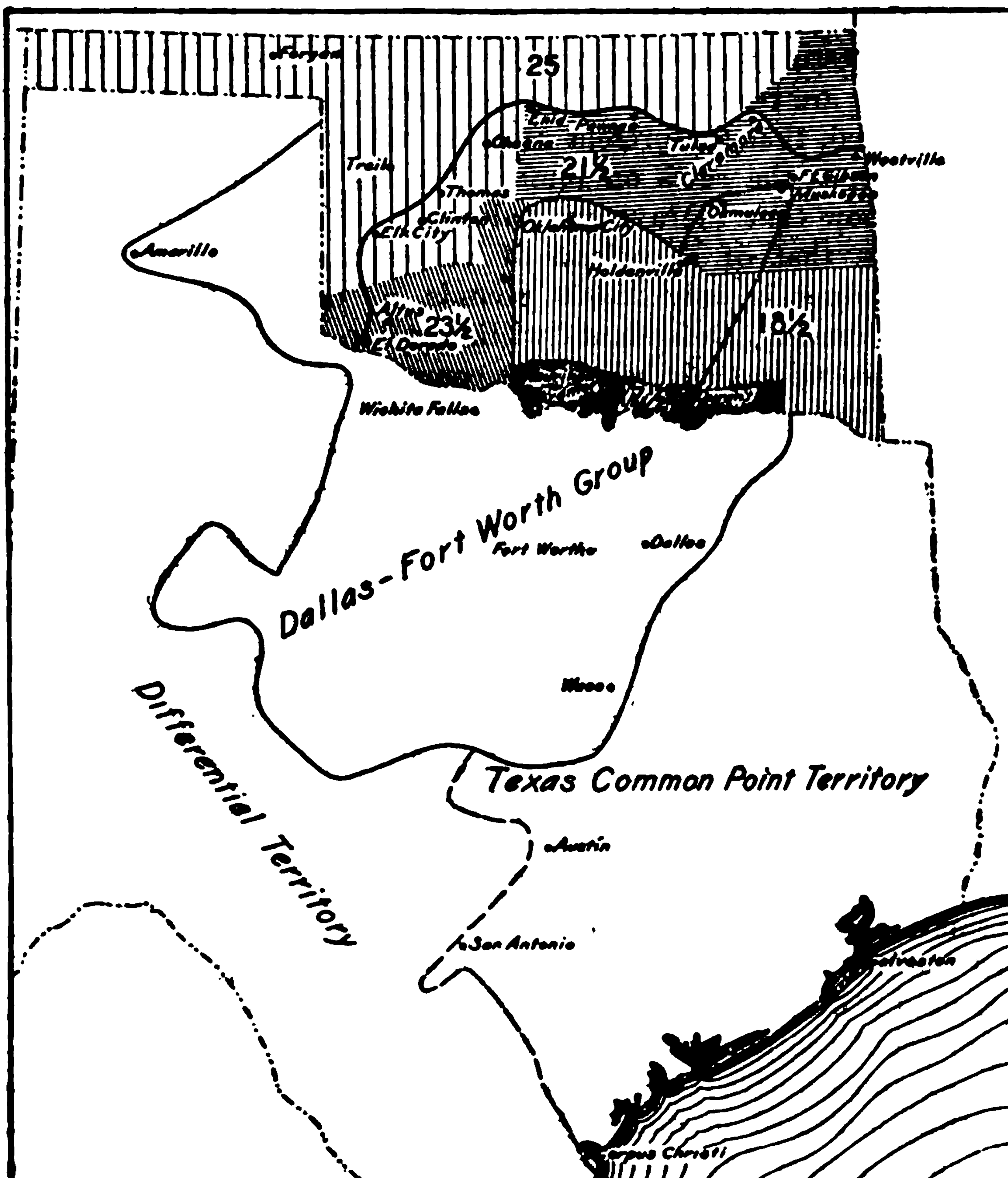
Complainant also offered for comparative purposes the following exhibit showing the present carload rates and minima and distances to Oklahoma City from Wichita and Coffeyville, Kans., Lake Charles, La., and Fort Worth and Waco, Tex., and the revenue yielded per ton-mile and per car-mile, based on the carload minima shown:

To Oklahoma City from—	Distance.	Rate.	Minimum weight.	Revenue per ton-mile.	Revenue per car-mile.
	Miles.	*Cents.*	*Pounds.*	*Cents.*	*Cents.*
Wichita, Kans	172	14	24,000	1.62	19.53
Coffeyville, Kans	175	14	24,000	1.60	19.20
Lake Charles, La	580	27	30,000	.93	13.96
Fort Worth, Tex	205	27	30,000	2.63	39.51
Waco, Tex	293	27	30,000	1.84	27.64

While defendants contend that the rates in effect from Fort Worth and Waco are reasonable, they admit that because of the rates now published from Oklahoma points to Texas points, a readjustment from Fort Worth and Waco is proper. The interveners also admit that the present rates from Waco and Fort Worth are not relatively reasonable and state that the only purpose of their intervention is to oppose the complainant's request for the same rates northbound as prevail southbound. The interveners propose that in constructing rates from Waco and Fort Worth the state of Oklahoma be divided into three groups with rates of 21, 22, and 25 cents, respectively.

Soon after the issuance of the report in *Oklahoma Traffic Asso.* v. *A. & S. Ry. Co.*, *supra*, defendants proposed, with certain exceptions not necessary to state here, a 17.5-cent rate, carload minimum 26,000 pounds, from Waco and Fort Worth to Oklahoma destina-

tions within the territory bounded by the dotted line shown on the accompanying map, and a 21.5-cent rate to points in Oklahoma outside of the described territory. This proposal carried the 17.5-cent rate as far north as Muskogee, Okmulgee, Holdenville, and El Reno. This proposed adjustment was not satisfactory to the complainant or to the Oklahoma interests, and on that account was not made effec-



tive by defendants. Complainant regarded it as unjustly discriminatory against Texas because it did not contemplate embracing as large a territory at 17.5 cents from Waco and Fort Worth as the Texas territory accorded that rate southbound from Oklahoma points. Oklahoma interests, on the other hand, regarded the proposal as unjustly discriminating against them.

Upon the hearing a readjustment of rates and groupings on millwork from Waco and Fort Worth to Oklahoma destinations, different from that indicated above, was suggested by defendants, whereby it is proposed to divide the state of Oklahoma into five groups, taking rates of 17.5, 18.5, 21.5, 23.5, and 25 cents as indicated by the shaded territories shown upon the accompanying map.

Defendants state that if the question presented were merely one of establishing reasonable rates from Waco and Fort Worth to Oklahoma destinations, they would press their contention that the present rates are reasonable. This contention is based upon the fact, already stated, that the present rates on millwork are the usual differential above the rates on lumber for the same movement. Defendants show that the average value per car of millwork is more than double that of a carload of yellow-pine lumber, while the average loading is only 28,000 pounds, as compared with 50,000 pounds on lumber. Defendants' willingness to revise the northbound rates is based upon their belief that commercial conditions require a revision to the extent suggested by them, in view of the rates made effective southbound in compliance with our order in *Oklahoma Traffic Asso. v. A. & S. Ry. Co.*, *supra*.

Defendants offered numerous rate comparisons in support of the rates proposed by them. The table given below is based largely upon defendants' exhibits and shows the distances from Waco and the average distances from Waco and Fort Worth to Oklahoma destinations, the present rates to those destinations, the rates proposed by defendants, and the earnings per car and per car-mile which defendants would derive under the rates which they propose. The earnings per car and per car-mile are shown first on the basis of Waco distances and a loading of 32,000 pounds per car and second on the basis of average distances from Waco and Fort Worth to Oklahoma destinations and a per car loading of 28,000 pounds. Defendants used the first basis in their exhibits and later pointed out that had they used a weight of 28,000 pounds per car, the average loading of complainant's shipments during the last six months of 1915, the car-mile earnings derived under the rates proposed by them would be less than indicated in their exhibits. They concede, however, that since it is proper to group Waco and Fort Worth some allowance should be made for the fact that the car-mile earnings which they show are not based on the average distance from those points to Oklahoma destinations but upon the distances from Waco, the more distant point.

From Waco to—	Distance.		Present rates.	Defendants' proposed rates.	Revenue yield of rates defendants propose.			
					Based on Waco distances and a loading of 32,000 pounds per car.		Based on average of Waco and Fort Worth distances and loading of 28,000 pounds per car.	
	From Waco.	Average from Waco and Fort Worth.			Per car.	Per car-mile.	Per car.	Per car-mile.
	Miles.	*Miles.*	*Cents.*	*Cents.*		*Cents.*		*Cents.*
Hugo	225	181.5	26	17.5	$56.00	24.8	$49.00	27.00
Ardmore	191	147.5	26	17.5	56.00	29.3	49.00	33.22
Wister	331	287.5	26	18.5	59.20	17.9	51.80	18.02
Ada	284	240.5	27	18.5	59.20	20.8	51.80	21.54
Frederick	274	230.5	28	23.5	75.20	27.4	65.80	28.55
Altus	297	253.5	28	23.5	75.20	25.3	65.80	25.96
Lawton	242	198.5	27	21.5	68.80	28.4	60.20	30.33
Chickasha	263	219.5	27	18.5	59.20	22.5	51.80	23.60
Holdenville	301	257.5	27	18.5	59.20	19.6	51.80	20.12
Oklahoma City	293	250.5	27	18.5	59.20	20.2	51.80	20.68
Hobart	332	288.5	28	23.5	75.20	22.6	65.80	22.81
Weleetka	321	277.5	27	18.5	59.20	18.4	51.80	18.67
Chandler	340	296.5	27	21.5	68.80	20.2	60.20	20.30
Muskogee	340	296.5	27	21.5	68.80	20.2	60.20	20.30
Clinton	351	307.5	28	25	80.00	22.8	70.00	22.76
Tulsa	392	348.5	27	21.5	68.80	17.5	60.20	17.27
Enid	357	313.5	27	21.5	68.80	19	60.20	19.20
Claremore	385	341.5	27	21.5	68.80	17.9	60.20	17.63
Vinita	410	366.5	27	21.5	68.80	16.8	60.20	16.43
Blackwell	405	361.5	27	25	80.00	19.7	70.00	19.36

Neither defendants nor interveners claim that transportation conditions on southbound traffic are different from those on northbound traffic. Their contention is that commercial conditions are different. That is to say, that rates from competitive points such as St. Louis, Chicago, Kansas City, Wichita, and Memphis affect the Oklahoma points differently from the manner in which they affect Fort Worth and Waco. In support of this contention the interveners filed exhibits showing that the rates on millwork from the competitive points named above yield an average of 11.7 mills per ton-mile for an average distance of 516.8 miles to southern Oklahoma points as against an average yield of 9.2 mills for an average distance of 660 miles to the Dallas-Fort Worth group. The interveners also show that the rates on millwork from competitive points are a higher percentage of class D rates to southern Oklahoma than to Texas destinations and from those comparisons they conclude that the rates northbound from Waco and Fort Worth should be on a higher basis than the rates in the opposite direction.

It is also contended by the interveners that the Oklahoma state rates are on a higher basis than the Texas state rates and that this is a situation that should properly be taken into account in determining rates to be established from the Texas points.

Comparisons of rates to points in Oklahoma from the yellow-pine blanket as a whole are not persuasive as to the reasonableness of rates to the same destinations from Fort Worth and Waco. These points

are near the northern boundary of the yellow-pine blanket and no lumber originates at either of them. It does not follow that because a rate of 27 cents on millwork might be reasonable from the entire yellow-pine blanket, the same rate is reasonable from Waco and Fort Worth. Moreover, the fact that the present rates to Oklahoma destinations are made the usual differential over lumber rates for the same movement is not conclusive of their reasonableness, since the lumber rates with which they are compared are merely paper rates. With regard to this the following was said in *Oklahoma Traffic Asso.* v. *A. & S. Ry. Co.*, *supra*, at page 342:

> We have held in a number of cases that manufactured products of lumber should take higher rates than lumber from and to the same points, and for the identical reasons now advanced by respondents, *Yellow Pine Sash, Door & Blind Mfrs. Asso.* v. *S. Ry. Co.*, 35 I. C. C., 150, and case cited therein; also that the rates on the manufactured products should be related uniformly to the corresponding rates on lumber. These principles are applicable, however, only where there is an actual lumber movement between the points in issue. Rates on manufactured products of lumber obviously can not be based on a differential over paper rates on lumber between the same points. There is practically no movement of lumber from Oklahoma to Texas. * * * The level of rates on lumber may be immaterial where the issue presented is merely one of discrimination between shippers of lumber and shippers of manufactured products of lumber between particular points, but not where only the reasonableness of one set of rates is in issue.

In *Oklahoma Traffic Asso.* v. *A. & S. Ry. Co.*, *supra*, we found that the relationship then existing between the intrastate carload rates on sash, doors, and blinds and other wooden building materials in Texas and the rates then in effect on like traffic from Oklahoma City and Okmulgee to Texas was unduly prejudicial to the Oklahoma points involved and also that the rates therein found reasonable as maxima from Oklahoma City and Okmulgee would not remove the discrimination in case the distance scale rates at that time in effect from Waco were continued. At that time rates on sash and doors from Waco to Texas points were class D with a maximum of 10 cents per 100 pounds throughout Texas common-point territory. In compliance with our order the Texas rates have been revised so that they are now on the class D basis with a maximum of 14.5 cents, minimum weight 30,000 pounds. There is no showing in the instant case that the existing Texas rates from Fort Worth and Waco unduly discriminate against interstate traffic from Oklahoma points. A comparison of Oklahoma and Texas intrastate rates can not be regarded as conclusive of the issues in this case. Such a comparison is difficult to make, since the Oklahoma state rates are on a distance scale basis and the Texas rates are on what might properly be termed a blanket adjustment. Moreover, the minimum weight on straight carloads of any of the articles included

in the millwork list is 24,000 pounds in Oklahoma and 30,000 pounds in Texas, in straight or mixed carloads.

The argument that rates southbound from Oklahoma to Texas which were prescribed by us are not a fair measure of the reasonableness of rates in the opposite direction presupposes that we considered commercial conditions in determining the reasonableness of the southbound rates. While it is true that rates from competitive points were considered and discussed in *Oklahoma Traffic Asso.* v. *A. & S. Ry. Co.*, *supra*, the conclusion that the prevailing rates from Oklahoma City and Okmulgee were unreasonable in so far as they exceeded the rates which were prescribed was not based upon a consideration of commercial conditions.

Higher rates in one direction than in the opposite direction over the same line of railroad require satisfactory explanation. In *Corporation Commission of Oklahoma* v. *A. & S. Ry. Co.*, 23 I. C. C., 688, we prescribed a scale of class rates between Oklahoma and Texas points, the same rates to apply northbound and southbound. The class rates between Oklahoma and Texas points are maintained on that basis at the present time. We see no reason why the rates on millwork should not be similarly adjusted.

From a consideration of all the facts and circumstances appearing of record we are of the opinion that the present rates from Waco and Fort Worth to points in Oklahoma within the territory bounded by the heavy line shown on the accompanying map were and are unjust and unreasonable to the extent that they exceeded and exceed 17.5 cents, at a carload minimum weight of 26,000 pounds, and to all other Oklahoma points on the line of defendants to the extent that they exceeded and exceed 21.5 cents, at a carload minimum weight of 26,000 pounds, which rates and carload minima should be maintained by defendants as maxima for the future. This is in accordance with complainant's request, except that the rate last quoted is 21.5 cents instead of 21 cents. The descriptions of articles included in the list with sash and doors and the provisions for carload mixtures should be the same for the rates prescribed from Waco and Fort Worth to Oklahoma points as are now published in connection with rates from Oklahoma points to Texas.

Under this finding the 17.5-cent rate will apply to all Oklahoma points embraced within the territory bounded on the west and north by the lines of the St. Louis & San Francisco, Eldorado to Altus, inclusive; of the Wichita Falls & Northwestern, Altus to and including Elk City; of the Chicago, Rock Island & Pacific, Elk City to and including Clinton; of the Kansas City, Mexico & Orient, Clinton to and including Thomas; of the St. Louis & San Francisco, Thomas to and including Okeene; of the Chicago, Rock Island & Pacific, Okeene to and including Enid; of the St. Louis

& San Francisco, Enid to and including Claremore; of the St. Louis, Iron Mountain & Southern, Claremore to and including Fort Gibson; of the St. Louis & San Francisco, Fort Gibson to and including Westville; on the east by the Oklahoma-Arkansas boundary from Westville to the Red River; and on the south by the Red River; and including points located on the lines of railroad designated above.

It will be observed that the above-described territory, to which the 17.5-cent rate is prescribed from Waco and Fort Worth, is a little smaller than the Dallas-Fort Worth group to which a like rate is applied from Oklahoma points of origin. Similarly the prescribed 21.5-cent group is much less extensive than Texas common-point territory which takes that rate from Oklahoma points. The most distant Oklahoma point is 420 miles from Fort Worth, while the most distant point in Texas common-point territory is 610 miles from Oklahoma City. Waco and Fort Worth are from 41 to 90 miles closer to the Oklahoma territory to which a rate of 17.5 cents is prescribed than are Oklahoma City and Okmulgee to the Dallas-Fort Worth group.

When the rates herein prescribed are established there will be no departure from the long-and-short-haul rule of the fourth section on this traffic from Fort Worth and Waco to Oklahoma points or to points beyond involved in the portions of applications set for hearing in connection with this proceeding. Those portions of applications for relief will have no office to perform when the rates herein found reasonable become effective, and are denied.

Considerable evidence was introduced by complainant to show damage resulting from charges paid on shipments from Oklahoma points to Waco. In *Oklahoma Traffic Asso.* v. *A. & S. Ry. Co.*, *supra*, no reparation was awarded. That case was decided November 3, 1915. Defendants admit that from January 31, 1916, the effective date of the order in that case, the rates on sash and doors from Fort Worth and Waco to Oklahoma points have not been just to complainant. We are of opinion and find, that with respect to shipments of millwork in carloads made by complainant from Fort Worth and Waco to points in Oklahoma since January 31, 1916, the complainant has shown that it was damaged and is entitled to reparation; and that the amount of the damage is represented by the difference between the amount complainant paid and bore and the amount it would have paid had the rates herein prescribed been in effect. Complainant should prepare a statement showing the details of the shipments in accordance with rule V of the Rules of Practice, which statement should be submitted to defendants for verification. Upon receipt of a statement so prepared and verified, we shall consider the entry of an order awarding reparation.

Orders will issue in accordance with the above findings.

No. 8707.

SOUTH MISSISSIPPI DAIRYMEN'S ASSOCIATION
v.
ILLINOIS CENTRAL RAILROAD COMPANY.

Submitted August 11, 1916. Decided April 12, 1917.

Rates on milk from certain points on the Illinois Central Railroad in Mississippi to New Orleans, La., found to be unreasonable. Reasonable rates prescribed for the future and reparation awarded.

George Butler and *G. G. Lyell* for complainant.
Frank W. Gwathmey and *R. Walton Moore* for defendant.

REPORT OF THE COMMISSION.

McCHORD, *Commissioner:*

The complaint in this case, filed by a voluntary association of dairymen on behalf of 38 members named in the petition, alleges that the rates charged for the transportation of milk on passenger trains from Brookhaven, Wesson, Beauregard, Hazlehurst, and Crystal Springs, Miss., points on the line of defendant Illinois Central Railroad Company, to New Orleans, La., are unjust and unreasonable, and also unjustly discriminatory as compared with rates from equidistant points on the line of the Yazoo & Mississippi Valley Railroad Company to the same destination. Reparation on shipments made within the statutory period, and just and reasonable rates for the future are asked.

The points in question are all located in that section of Mississippi which was formerly devoted almost exclusively to cotton growing. About the year 1910 the production of cotton began to decrease on account of the ravages of the boll weevil, and dairying and various other pursuits were introduced. From a small beginning the dairy industry had gradually developed until at the time the complaint herein was filed the shippers of Wesson alone were shipping 500 gallons of milk per day. During the year ended April 30, 1916, 213,000 gallons were shipped from the complaining points. New Orleans seems to be the principal market for the milk produced in this territory.

The milk is shipped in less-than-carload lots in 5, 8, and 10 gallon cans, which weigh 12, 18, and 25 pounds, respectively. A gallon of milk weighs about 8.6 pounds. The shipments are transported with-

out refrigeration on passenger trains, which have always been scheduled to stop at the loading points here involved. No extra equipment or additional employees have been required in handling the commodity. No claims for loss or damage either to the milk or to the empty cans returned have been presented. No bill of lading or other form of receipt is issued. The shippers buy two or three days' supply of tickets from the station agent and, as the shipments are made, the cans are tagged by the shippers, placed on a truck near the point of loading, and loaded into the baggage car by the baggagemen, with the assistance of the shippers in some instances. The unloading at destination is performed by the consignees.

Complainants compete in the New Orleans market with shippers located at Osyka, Chatawa, Magnolia, Fernwood, and McComb, Miss., points farther south on the line of defendant, and also with shippers located at points on the Yazoo & Mississippi Valley, New Orleans Great Northern, and New Orleans & Northeastern railroads. In support of the allegations of the complaint, exhibits were submitted comparing the rates attacked with the rates from the competing points on the lines above mentioned. The rates from points on the Yazoo & Mississippi Valley Railroad were prescribed by us in *Dixie Dairymen's Asso.* v. *Y. & M. V. R. R. Co.*, 27 I. C. C., 618. The other points above named on the Illinois Central and the points on the New Orleans Great Northern are all located nearer to New Orleans than the points here complaining, but to show the comparative level of the rates from those points complainant has increased them by adding the same rate of progression for the added distances as was applied in constructing the rates prescribed in the case above cited. The rates, which include the return of the empty can, compare as follows:

From—	Distance (miles).	Size of can (gallons).	Rates (in cents per can).				
			(a)	(b)	(c)	(d)	(e)
Crystal Springs	159	5	25.0	21.7	19.8	17.0	12.3
		8	35.0	27.9	26.1	23.0	18.9
		10	42.0	31.0	30.5	28.0	23.3
Hazlehurst	150	5	24.0	21.7	19.3	15.0	11.9
		8	34.0	27.9	25.5	20.0	18.4
		10	40.0	31.0	29.9	25.0	22.7
Wesson	128	5	23.0	21.0	18.8	15.0	11.3
		8	32.0	27.0	24.8	20.0	17.7
		10	38.0	30.0	29.1	25.0	21.9
Brookhaven	120	5	22.0	21.0	18.4	15.0	10.9
		8	31.0	27.0	24.3	20.0	17.7
		10	36.0	30.0	28.5	25.0	21.9

(a) Rates under consideration herein.
(b) Rates from equidistant points on Yazoo & Mississippi Valley Railroad under mileage scale prescribed in the *Dixie Case*.
(c) Rates from Osyka and Chatawa, Miss., points on Illinois Central Railroad, increased as above explained.
(d) Rates from equidistant points on the New Orleans & Northeastern Railroad.
(e) Rates from points on New Orleans Great Northern Railroad increased as above explained.

The above comparisons with rates from equidistant points on the Yazoo & Mississippi Valley Railroad, in conjunction with the fact that that line is controlled by the defendant herein, form the basis for the charge of unjust discrimination. A witness for defendant admitted that the rates from points on the Illinois Central should be no higher than from equidistant points on the Yazoo & Mississippi Valley Railroad, but he expressed the opinion that if certain additional facts had been presented in the *Dixie Case* a different conclusion might have been reached. That case was decided June 19, 1913; no petition for rehearing was filed; and notwithstanding the fact that the order expired September 1, 1915, the rates are still in effect. It is also suggested that the rates prescribed in that case were made low in order to develop an infant industry, but it is well established that this Commission can not and does not fix rates on any such basis. The rates fixed in that case were prescribed as reasonable rates *per se*.

On behalf of defendant it was said that between the time of loading and unloading milk is handled in substantially the same manner and under substantially the same conditions as express and baggage, and that the present milk rates are lower than either the express or excess baggage rates. We do not think that the milk rates here attacked are comparable with either the express or excess baggage rates.

The defendant also submitted exhibits comparing the rates attacked with milk rates from equidistant points to Memphis, Tenn., and Louisville, Ky., with local mileage scales of milk rates on various lines, and with the rates on other commodities between the complaining points and New Orleans. The milk rates included in these comparisons appear to be on approximately the same level as the rates found unjust and unreasonable in the *Dixie Case*.

Upon consideration of the facts of record we find that the rates in issue are shown to have been and to be unreasonable to the extent that they exceeded and exceed the following distance rates, which will be prescribed as reasonable maximum rates for the future:

Distances.	Rates, in cents per can.		
	5-gallon cans.	8-gallon cans.	10-gallon cans.
130 miles and over 115 miles	20.3	26.1	29.0
145 miles and over 130 miles	21.0	27.0	30.0
160 miles and over 145 miles	21.7	27.9	31.0

We further find that the members of complainant association set forth in the complaint paid and bore the charges on the shipments in question at the rates herein found to be unreasonable; that they

were damaged to the extent of the difference between the charges collected and the charges which would have accrued at the rates herein found to have been reasonable; and that they are entitled to reparation, with interest. The exact amount of reparation can not be determined from the present record, and statements should be prepared showing the details of the shipments upon which reparation is asked in accordance with rule V of the Rules of Practice, which should be submitted to defendant for verification. Upon receipt of statements so prepared and verified the Commission will consider the entry of an order for reparation.

An order will be entered in accordance with the findings herein.

INVESTIGATION AND SUSPENSION DOCKET No. 904.

DULUTH DOCKAGE ABSORPTION.

Submitted February 9, 1917. Decided April 9, 1917.

Respondent has failed to justify charges for dockage proposed to be made in addition to the rate on shipments via the lakes to or from Duluth, except where proposed at private docks.

W. L. Jenks and *W. J. Buchanan* for Northwestern Steamship Company.

Francis W. Sullivan and *G. Roy Hall* for Commercial Club of Duluth.

W. P. Trickett for Minneapolis Traffic Association.

J. H. Beek and *E. H. Berg* for St. Paul Association of Commerce.

REPORT OF THE COMMISSION.

DANIELS, *Commissioner:*

By tariff now in force the Northwestern Steamship Company, formerly the Port Huron & Duluth Steamship Company, includes in its rates absorption of the dockage charges at Duluth, Minn., on all local shipments to or from that port when consigned to or originating at the railroad docks or the Union docks, reserving the option to make deliveries by lightering, switching, or carting. According to this tariff, lots of 50 tons or more arriving on one vessel are delivered to certain named private docks, when consigned thereto. A former tariff provided for delivery at private docks of lots of 10,000 pounds or more.

By tariff suspended in this proceeding until June 19, 1917, it is sought in addition to the rates to Duluth to discontinue absorption of the charges for dockage of from 2 to 2½ cents per 100 pounds, and to provide for deliveries of freight in lots of three carloads or more at private docks upon payment of 2½ cents per 100 pounds.

This tariff was protested by the Commercial Club and Rust-Parker Company, both of Duluth. The rates on the traffic to which it is proposed to apply the dockage charges are in part joint rates applicable to through routes established by us on the complaint of the respondent herein. *Port Huron & Duluth S. S. Co.* v. *P. R. R. Co.*, 35 I. C. C., 475. We have also heretofore held that the respondent here and other carriers had failed to justify a proposed increase in these rates. *Rates via Rail-and-Lake Routes*, 37 I. C. C., 302. In this case we said:

> These respondents, namely, the boat lines, also urge that the Commission should consider the expense of various privileges included in the rates. Among these are direct delivery from package boats to private docks, storage, reconsignment, and "split" deliveries of carload lots. Services such as these should be paid for.

Respondent relies on our statement. That services such as those named should be paid for can not be denied. Protestants maintain that such services were considered when the rates were made and are compensated for in the rates. When those dockage absorptions were established by the predecessor of the respondent there was competition between it and boat lines owned by rail carriers and rates are now less than they were then. Since the sale by the rail lines of boats plying to and from Duluth the Great Lakes Transit Corporation, the purchaser of many of such boats, has continued service to Duluth on the rates applicable by the line of respondent which include dockage.

Respondent is a party to joint rates to points west of Duluth, which are the same as or less than the boat rate to Duluth and the rail rate therefrom. These joint through rates include dockage service, and on such traffic the boat line receives as its divisions less than the local rates on traffic to Duluth.

There was testimony as to the difficulty of making deliveries at certain private docks and that the cost of service had increased. Special delivery at private docks the respondent is not obligated to make; and if it elects to do so, a charge may be imposed for this special service, provided the charge is not unreasonable or discriminatory. That such special delivery has been made in the past without special charge does not preclude the imposition of a reasonable charge for the service in the future. We find on the record that the proposed charge for the special delivery at private docks is just

and reasonable, and such provisions of the tariff under suspension as establish these charges at private docks may be made effective.

In support of the proposed increased charges respondent cites its increased expenses. The wages of employees were higher in 1916 than in 1915, but the total return from all business does not appear of record nor was there any testimony tending to show that the rates on local traffic to Duluth are not sufficiently high to include the usual delivery service. Respondent sought through routes on the rates it has heretofore received and we have held that such rates could not be increased. Respondent has heretofore absorbed the dockage charge, and the presumption is that the through rate included adequate compensation for the services rendered at the point of general delivery. *I. C. C.* v. *C., B. & Q. R. R. Co.*, 186 U. S., 320, 336. Respondent's witnesses testified that the existing public docks to which it proposed to restrict deliveries are adequate. This testimony is controverted, an issue which we do not deem it necessary to determine here.

To make an extra charge for the service rendered would increase rates and the burden to justify the increased rates is on the respondent. This burden, except as to special charges proposed at private docks, has not been sustained and we are of opinion and find that, except as indicated, the proposed increased charges have not been justified and an order to cancel the offending items in the proposed tariff will be entered.

HARLAN and MCCHORD, *Commissioners*, dissent.

No. 33 (Ex Parte).
SAFETY APPLIANCES.

Submitted March 13, 1917. Decided April 12, 1917.

Upon application of certain railroad companies, period of time heretofore granted common carriers by paragraphs (*b*), (*c*), (*e*), and (*f*) of the order of the Commission dated March 13, 1911, and by the order of the Commission dated November 2, 1915, within which to make their freight cars conform to certain of the standards of equipment prescribed by the Commission pursuant to the provisions and requirements of an act to supplement the safety appliance acts, approved April 14, 1910, as amended, further extended for a period of eight months from July 1, 1917.

L. T. Michener and *J. Coleman* for Grand Trunk Railway system.

R. W. Bell for Illinois Central Railroad Company.

G. F. Snyder and *C. W. Van Buren* for Canadian Pacific Railway.

B. P. Floy for New York, Ontario & Western Railway Company.

T. H. Goodnow for Chicago & Northwestern Railway Company.

F. F. Gaines for Central of Georgia Railway.

G. W. Wildin for New York, New Haven & Hartford Railroad Company.

D. W. Cross for Toledo, St. Louis & Western Railway Company.

A. W. Towsley for Ann Arbor Railroad Company and Manistique & Lake Superior Railway Company.

A. W. Gibbs for Pennsylvania Railroad Company.

R. B. Basbridge for Philadelphia & Reading Railway Company.

Charles C. Paulding for special committee representing various railroads.

George Hodges for special committee on relations of railway operation to legislation.

W. E. MacEwen for National Petroleum Association, Western Petroleum Association, and National Refining Company.

W. G. Lee for Brotherhood of Railroad Trainmen.

Warren S. Stone for Brotherhood of Locomotive Engineers.

W. S. Carter for Brotherhood of Locomotive Firemen and Enginemen.

L. E. Sheppard for Order of Railway Conductors.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

By orders entered March 13, 1911, and November 2, 1915, the Commission, exercising the authority conferred upon it by the pro-

visions of an act to supplement the safety appliance acts, approved April 14, 1910, as amended March 4, 1911, extended to July 1, 1917, the period within which common carriers subject to said act shall make their freight cars actually in service on July 1, 1911, conform to certain of the standards of equipment prescribed by the Commission pursuant to the provisions and requirements of section 3 of said act. This is an application by certain carriers for a still further extension of this period.

The petitioning lines, representing a large percentage of the total railway mileage of the United States, show that on January 1, 1917, there were 296,033 cars which did not fully conform to the prescribed standards with respect to uniform location of the various appliances required by the safety appliance acts. It is urged that because of practical difficulties confronting the carriers at the present time, such as shortage of cars and labor, the inability to obtain new equipment, and congested traffic conditions, a further extension of time within which to make the required changes in their equipment is warranted, and that the period of extension should be sufficient to enable each carrier to make the required changes in its own cars in the usual course of interchange. It must be borne in mind that the penalty provided in the act attaches to the carrier using a car not conforming to the standards prescribed by the Commission, regardless of the ownership of the car. As freight cars move in interchange from one road to another throughout the country, it is apparent that the situation must be dealt with as an entirety and that all carriers must bear some measure of responsibility in securing as prompt a compliance as possible with the standards prescribed. It does not appear that the changes required in the cars which have not yet been made to conform to the standards of equipment are of such a nature as to necessitate any prolonged withdrawal from transportation, and we see no good reason why, with proper cooperation on the part of the carriers, some system can not be devised by which the required changes can be made by foreign roads, if necessary, and the owning carrier properly billed for the expense, in much the same manner as in the case of ordinary running repairs.

Upon consideration of all the facts and circumstances appearing of record, we are of opinion and find that good cause has been shown for a further extension of eight months from July 1, 1917, and that this extension should apply uniformly to all common carriers subject to the act of April 14, 1910, as amended. Accordingly an order will be entered granting such extension.

No. 8569.

AKRON, CANTON & YOUNGSTOWN RAILWAY COMPANY

v.

BALTIMORE & OHIO RAILROAD COMPANY.

Submitted May 29, 1916. Decided April 17, 1917.

Charge of 10 cents per 2,000 pounds, minimum $3 per car, imposed by defendant for switching cars loaded with coal from complainant's point of connection with the Cleveland division of defendant at Akron, Ohio, to private sidings and industries located on that division of defendant within the switching limits of Akron, while contemporaneously maintaining a charge of $2.50 per car for switching cars loaded with coal from points of connection with the Erie Railroad Company and the Pennsylvania Company to said private sidings and industries, found to be unduly prejudicial. Similar allegation in respect of shipments to points on defendant's New Castle division, not sustained.

Taylor & Stewart and *William Simpson* for complainant.
William Ainsworth Parker and *Charles R. Webber* for defendant.

Report of the Commission.

Hall, *Chairman:*

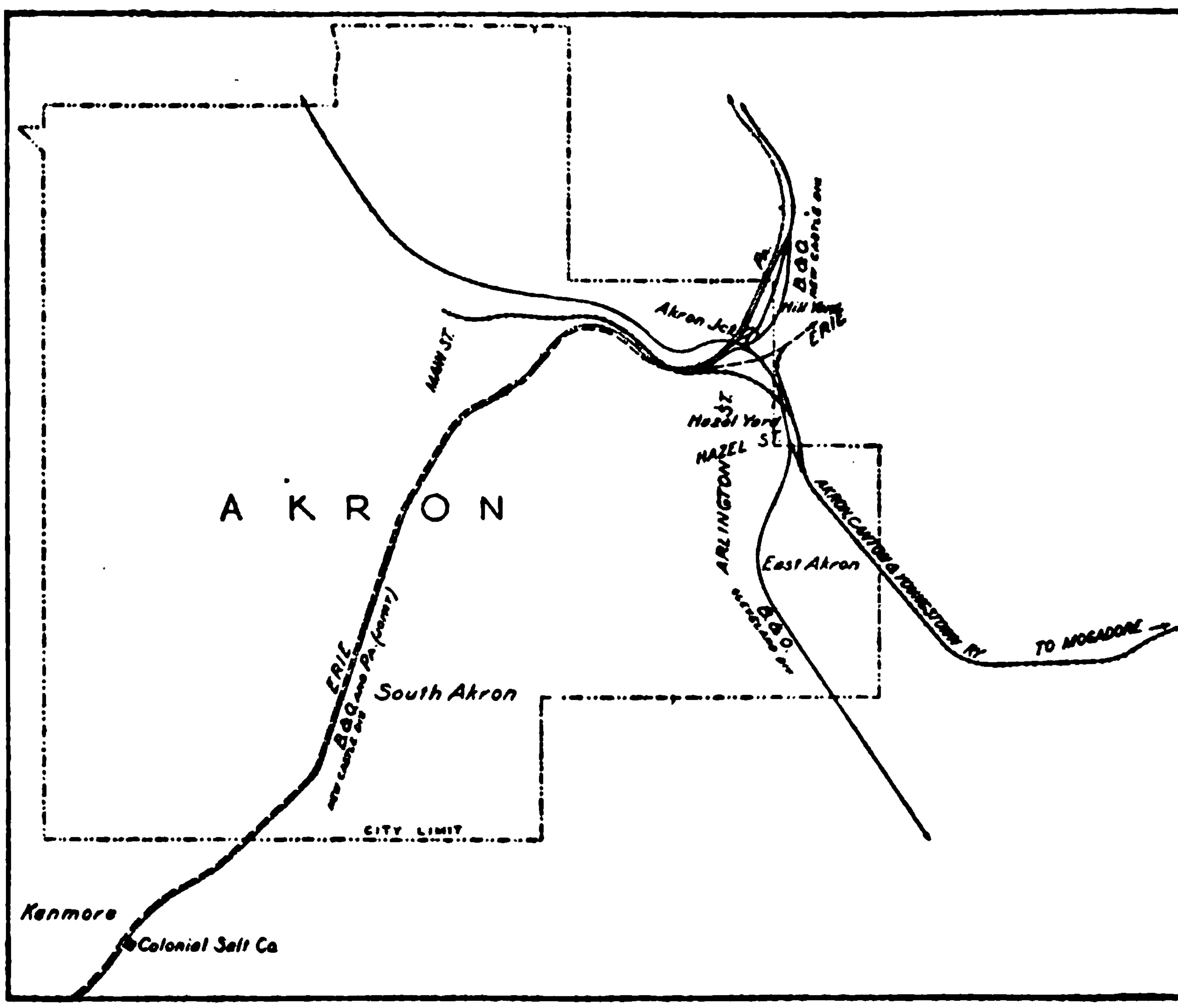
The complainant is a common carrier of property over its line of railroad, 10 miles in length, from Mogadore, Ohio, where it connects with the Wheeling & Lake Erie Railroad Company, to Akron, Ohio. By complaint, filed January 4, 1916, it alleges that defendant's charge of 10 cents per 2,000 pounds, minimum $3 per car, for switching cars loaded with interstate shipments of coal, coal boulets or briquettes, and coke, from its point of connection with complainant at Akron to industries and private sidings on defendant's tracks within the switching limits of Akron, while contemporaneously switching cars loaded with the same commodities from its points of connection at Akron with the Erie Railroad Company and the Pennsylvania Company, respectively, hereinafter called the Erie and the Pennsylvania, at a charge of $2.50 per car, subjects complainant to unjust discrimination and to undue prejudice and disadvantage.

No coal boulets or briquettes or coke are transported to Akron over complainant's line. The ground of complaint is therefore confined to coal.

The accompanying map, reproduced from an exhibit of record, shows the situation respecting the several lines of railroad. Akron is served by two divisions of defendant's line, the New Castle and

the Cleveland. Defendant performs no switching service for the Erie or the Pennsylvania on the former division and our consideration will therefore be restricted to conditions surrounding service performed on the latter.

Complainant's line connects with that of the defendant just south of Hazel street. The connection is a comparatively short distance from Akron Junction where there are connections between defendant's line and those of the Erie and the Pennsylvania.



Cars for delivery at points on the Cleveland division are classified by defendant in its Hazel yard, just north of Hazel street. There is no substantial difference in the distances from the interchange tracks of the several carriers to this yard. From there the switching service performed by defendant in moving a car to any given siding is the same.

Until the connection between complainant's and defendant's lines was made in August, 1914, the delivery of carload shipments from the former destined to points on the latter's tracks within the switching limits of Akron necessitated a movement between the two lines over that of the Erie. The Erie's charge for this service was $2 per car and that of defendant $2.50. On September 15, 1915, the charges under attack became effective. Under these charges defendant receives an average revenue of $4.69 per car.

Defendant submitted evidence intended to show that the charges are reasonable. Their reasonableness is not in issue.

It is claimed by defendant that the cost of the switching service performed for complainant exceeds the cost of such service for the Erie and the Pennsylvania. No attempt was made to show what the difference, if any, would be, but it is admitted that it would by no means equal the difference in the charges.

Defendant relies primarily upon the benefits derived by it from the reciprocal element in switching for the Erie and Pennsylvania.

During the period from September 1, 1915, to February 29, 1916, defendant performed switching service on cars received and delivered within the switching limits of Akron loaded with all commodities, including coal, from and to the carriers mentioned as follows:

Received from—		Delivered to—	
Complainant	902	Complainant	267
Erie	1,375	Erie	3,783
Pennsylvania	1,070	Pennsylvania	2,322

Apparently some of the cars received from complainant were switched to points on defendant's New Castle division.

The record indicates that the reciprocal advantage received by the defendant is much less in the case of the complainant than in the case of the Erie and the Pennsylvania. But we do not understand that carriers can so adjust their relations with connections as to unduly prefer shippers via one connection over those shipping via another. *Buffalo, Rochester & Pittsburgh Ry.* v. *Pennsylvania Co.*, 29 I. C. C., 114; *Pennsylvania Co.* v. *United States*, 236 U. S., 351.

Defendant's charge for switching coal received from complainant is practically the only exception to the general switching charge of $2.50 per car at Akron, applying on all commodities. The charge of $2.50 per car is generally absorbed. Complainant absorbs defendant's switching charge on coal, but defendant does not absorb the corresponding charge of complainant.

Upon the record we are of opinion and find that the maintenance by defendant of higher charges for the transportation of interstate shipments of coal in carloads from the point of physical connection between its line and the line of complainant at Akron to private sidings and industries located upon the Cleveland division of defendant's line, within the Akron switching limits, than are contemporaneously maintained and applied by it for like transportation from the points of physical connection between its line and those of the Erie or the Pennsylvania at Akron to such private sidings and industries, subjects complainant and shippers over its line to undue and unreasonable prejudice.

An appropriate order will be entered.

No. 8083.

BUSINESS MEN'S LEAGUE OF ST. LOUIS

v.

ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY ET AL.

Submitted December 9, 1916. Decided April 9, 1917.

1. Present commodity rates, with certain exceptions, between St. Louis, Mo., and Keokuk, Iowa, and points in Illinois found just and reasonable in so far as they do not exceed class rates.
2. Present commodity rates between St. Louis and Illinois points unduly prejudicial to St. Louis and unduly preferential of East St. Louis to the extent that they exceed the commodity rates over the same routes between East St. Louis and the same Illinois points, where these Illinois points are 100 miles or more from St. Louis; and, where the Illinois points are less than 100 miles from St. Louis, unduly prejudicial to St. Louis and unduly preferential of East St. Louis to the extent that they exceed the commodity rates over the same routes between East St. Louis and the same Illinois points by more than the differences which existed prior to October 26, 1914.
3. The same kind of undue prejudice found in respect to Keokuk, Iowa, and points in Illinois directly opposite.
4. Commodity rates between St. Louis and points in Illinois unduly prejudicial to St. Louis and unduly preferential of Chicago to the extent that the St. Louis rates are on a higher basis than the Chicago rates to the same Illinois points.
5. The same kind of undue prejudice found in respect to Keokuk and preference in favor of Chicago.
6. Maintenance of commodity rates between points in Illinois which, in combination with other commodity rates required or permitted by the report, will produce the undue prejudice to interstate commerce and undue preference of intrastate commerce within Illinois condemned by the report, unlawful.
7. Commodity rates between points in Illinois 100 miles or more apart, where on a basis lower than the basis of the commodity rates between St. Louis and Illinois points for corresponding distances, are to that extent a burden on interstate commerce and unduly preferential of intrastate commerce.

Same appearances as the original report, with the addition of *R. W. Richards* for the Pennsylvania Company and the Pittsburgh, Cincinnati, Chicago & St. Louis Railway Company.

SECOND SUPPLEMENTAL REPORT OF THE COMMISSION.

DANIELS, *Commissioner:*

The original and first supplemental report in this case dealt only with passenger fares, the matter of freight rates being left for

subsequent disposition. The Commission desired additional evidence on certain phases of the situation and in consequence a supplemental hearing was had "for the sole purpose of securing evidence to enable us to determine what are reasonable maximum class and commodity rates to apply between St. Louis, Mo., and Keokuk, Iowa, on the one hand, and points in Illinois on the other."

From all the evidence submitted at the initial and supplemental hearings we still find ourselves unable to reach a conclusion as to class rates, chiefly because insufficient data appeared to enable a convincing comparison to be made as to actual charges upon the same traffic under the Illinois classification and under the official classification. An investigation into this phase of the situation is being conducted by us. Within Illinois and between St. Louis and Keokuk and points in Illinois commodity rates are much more numerous than in surrounding territories and materially lower than the class rates. In the present report we shall deal only with commodity rates, and shall treat particularly the more important commodities.

It is alleged that St. Louis is subjected to undue and unreasonable prejudice and disadvantage as compared with East St. Louis and points similarly located in that the class and commodity rates between St. Louis and Illinois points 100 miles or more from St. Louis exceed the rates between East St. Louis and those same Illinois stations; and in that the rates between St. Louis and points less than 100 miles from St. Louis exceed the rates between East St. Louis and the same points by more than a reasonable amount. It is also alleged that the rates between St. Louis and Illinois points are unjustly discriminatory in favor of Chicago and other Illinois points in that the rates between St. Louis and Illinois stations, distance considered, are on a basis in excess of that of the rates between Chicago and other Illinois points and those same Illinois stations. Keokuk as an intervener alleges that it is in a position similarly disadvantageous and claims for itself whatever relief may be accorded to St. Louis. The positions of the other interveners are fully stated in the report dealing with passenger fares.

HISTORY OF THE RATES.

Within official classification territory, which is described in *The Five Per Cent Case*, 31 I. C. C., 351, there are included New England, trunk line, and central freight association territories. The last includes most of Illinois. One scale of rates prevails between stations in Illinois and points east of the Indiana-Illinois state line as far as a line running from Buffalo, N. Y., through Erie and Pittsburgh,

Pa., to Wheeling, W. Va., called the line of the western termini. This scale also applies between points within central freight association territory and is termed the central freight association scale. Another, termed the trunk line scale, is applicable between all stations east of the western termini points and stations west of the western termini as far as the Mississippi River. Since 1907 St. Louis has been included among these latter stations.

This trunk line scale is constructed according to the following scheme: The basis is formed by the class rates between New York and Chicago, called unit rates. The region west of the western termini is portioned into groups determined substantially by distance. The rate to each of these groups is a definite percentage of the unit rate applicable to what are termed 100 per cent points. *Saginaw Board of Trade* v. *Grand Trunk Railway Co.*, 17 I. C. C., 128.

Prior to 1906 the trunk line scale was applied to East St. Louis on a 116 per cent basis. Between St. Louis and points east of the Mississippi River all the rates were constructed by adding to the rates of East St. Louis a varying charge for crossing the Mississippi River made by the several transfer and transportation lines. In the language of the complainant's traffic manager it thus resulted that—

> There were as many schedules of rates as there were parties engaged in handling the traffic and there was no uniform classification so that the rates varied almost with every shipment or with the institution handling it. These rates ran from 2 cents to 10 cents per 100 pounds in less than carloads and one-half cent to 2½ cents in carloads.

As the result of the negotiations of the Municipal Bridge & Terminal Commission, created by the city of St. Louis, the carriers established rates between St. Louis and all points east beyond the radius of 100 miles from St. Louis which were the same as the rates between East St. Louis and those same points. Both St. Louis and East St. Louis were put upon a basis of 117 per cent of the trunk line scale. Between St. Louis and Illinois points rates were made upon the basis of the Illinois state distance scale, governed by the Illinois classification. In other words, St. Louis was treated in respect to rates to Illinois points as a part of Illinois. But here also, when the haul was 100 miles or more to or from St. Louis, there was a common rate for both St. Louis and East St. Louis; within the 100-mile radius St. Louis paid rates higher than East St. Louis, the spread in the class rates reaching the maximum at near-by points where it was—

Classes	1	2	3	4	5	6	7	8	9	10
Cents	3	3	3	2	2	2	1.5	1.5	1.5	1.5

This new adjustment went into effect upon eastbound traffic in September, 1907, and upon westbound in January, 1908. The arbitrary gradually decreased until it finally disappeared at the 100-mile point, beyond which the rates from St. Louis and East St. Louis continued the same. The Illinois classification governing Illinois state rates continued to apply upon the rates between St. Louis and Illinois points as it had done for a long time previous.

By this readjustment, St. Louis, Mo., East St. Louis, Madison, and Granite City, Ill., were treated as one community. A substantially similar arrangement had been accomplished as to the rates from East St. Louis and St. Louis upon traffic into Missouri, whereby the rates between East St. Louis and Missouri points were made equal to the rates between St. Louis and the same Missouri points beyond an irregular boundary line which varied on different carriers radiating from St. Louis between 45 and 250 miles, the average falling somewhere in the neighborhood of 100 miles. The rate adjustment effected as between St. Louis and East St. Louis and Illinois points continued without dissatisfaction until October 26, 1914, when, following *The Five Per Cent Case*, *supra*, the rates both class and commodity between St. Louis and eastern points, including Illinois, were generally increased 5 per cent. The carriers proposed on traffic between East St. Louis and Illinois points to increase the Illinois state rates by the same percentage, but these proposed increases in state rates were suspended by the State Public Utilities Commission of Illinois and the issue has not yet been determined.

Accordingly, as to points in Illinois 100 miles or more distant, East St. Louis has a newly acquired advantage over St. Louis of 5 per cent; and as to points less than 100 miles distant whatever advantage East St. Louis already possessed has been enlarged by the amount of the 5 per cent increase in the rates of St. Louis. This preference, the complainant avers, is undue; the defendants admit it is unlawful but maintain that it should be remedied by increasing the state rates 5 per cent. This the complainant substantially concedes to be a proper remedy, but the Illinois interests, including the State Public Utilities Commission of Illinois, contend for the present Illinois state rates and suggest that if the preference is found unlawful it should be remedied by reducing the interstate rates.

The basis for the class-rate structure in Illinois is a distance tariff of the Illinois commission, established in 1906. Each line is entitled to charge the full rate made under this scale and is not required to establish the rate jointly, but there are so many common points in Illinois served by more than one carrier that as a result the scale is joint for a large part of Illinois traffic.

IRON AND STEEL ARTICLES.

Between St. Louis and Keokuk and Illinois points iron and steel articles move under group commodity rates, and are assembled in 11 lists. Beyond the 100-mile zone St. Louis and East St. Louis, previous to *The Five Per Cent Case*, *supra*, were accorded the same rate; now there is a difference of 5 per cent. Within the 100-mile zone the rates formerly differed only by a bridge toll, now by 5 per cent plus a bridge toll. The most important of these lists, as appears from an exhibit of the defendants, are No. 1, which includes agricultural implements, castings, and iron, and No. 5, which includes bolts, nuts, wire nails, fencing, and like articles, called merchant iron list.

Most of these articles are rated fifth class in official classification territory and are there generally carried on the full classification basis. This is also true in western classification territory, except where the Chicago-St. Paul adjustment is reflected, and in the Iowa classification. Throughout the country fifth class is the general basis of movement.

Below are tables illustrative of the relation between the commodity rates on certain iron and steel articles between St. Louis and Keokuk and points in Illinois and the corresponding class rates:

COMPARISON OF RATES ON IRON AND STEEL ARTICLES CLASSIFIED IN LIST NO. 1 (AGRICULTURAL IMPLEMENTS, CASTINGS, AND SHAPES, ETC.) BETWEEN ST. LOUIS, MO., AND POINTS IN ILLINOIS, WITH PRESENT FIFTH-CLASS RATES AND PRESENT CLASS RATES MOST NEARLY APPROACHING THE COMMODITY RATES.

Between St. Louis, Mo., and—	Commodity rate.	Fifth-class rates.	Nearest class rate.
	Cents.	*Cents.*	*Cents.*
Galesburg, Ill	8.5	16.1	10th— 8.7
Quincy, Ill	7.4	13.1	10th— 7.4
Aurora, Ill	9.5	18.5	10th—10.1
Rockford, Ill	9.5	18.5	10th—10.1
Waukegan, Ill	9.5	18.5	10th—10.1
Springfield, Ill	7.4	12.9	9th— 7.5
Peoria, Ill	7.4	15.4	10th— 8.2
Joliet, Ill	9.5	17.6	10th— 9.8
Chicago, Ill	9.5	18.5	10th—10.1

COMPARISON OF RATES ON IRON AND STEEL ARTICLES CLASSIFIED IN LIST NO. 5 (WIRE, NAILS, ETC.) BETWEEN ST. LOUIS, MO., AND POINTS IN ILLINOIS, WITH PRESENT FIFTH-CLASS RATES AND PRESENT CLASS RATES MOST NEARLY APPROACHING THE COMMODITY RATES.

	Cents.	*Cents.*	*Cents.*
Aurora, Ill	11.6	18.5	9th—11.2
Rockford, Ill	11.6	18.5	9th—11.2
Waukegan, Ill	11.6	18.5	9th—11.2
Joliet, Ill	11.6	17.6	9th—10.8
Chicago, Ill	11.6	18.5	9th—11.2
Galesburg, Ill	11.6	16.1	8th—12.1
Quincy, Ill	9.5	13.1	8th—10.0
Springfield, Ill	8.4	12.9	8th— 7.5
Peoria, Ill	9.5	15.4	8th— 9.0

COMPARISON OF RATES ON IRON AND STEEL ARTICLES CLASSIFIED IN LIST NO. 1 (AGRICULTURAL IMPLEMENTS, CASTINGS, AND SHAPES) BETWEEN KEOKUK, IOWA, AND POINTS IN ILLINOIS, WITH PRESENT FIFTH-CLASS RATES AND CLASS RATES MOST NEARLY APPROACHING THE COMMODITY RATES.

Between Keokuk, Iowa, and—	Commodity rate.	Fifth-class rates.	Nearest class rate.
	Cents.	*Cents.*	*Cents.*
Aurora, Ill.	8.4	16.9	10th—9.2
Rockford, Ill.	8.4	17.4	10th—9.6
Waukegan, Ill.	8.4	17.6	10th—9.8
Joliet, Ill.	8.4	17.6	10th—9.8
Chicago, Ill.	8.4	17.6	10th—9.8
Galesburg, Ill.	5.8	12.6	10th—6.3
Quincy, Ill.	5.8	8.8	9th—5.3
Springfield, Ill.	5.8	17.2	9th—9.3
Peoria, Ill.	5.8	13.4	9th—7

COMPARISON OF RATES ON IRON AND STEEL ARTICLES CLASSIFIED IN LIST NO. 5 (WIRE, NAILS, ETC.) BETWEEN KEOKUK, IOWA, AND POINTS IN ILLINOIS WITH PRESENT FIFTH-CLASS RATES AND CLASS RATES MOST NEARLY APPROACHING THE COMMODITY RATES.

	Cents.	*Cents.*	*Cents.*
Aurora, Ill.	11.6	16.9	8th—13 9th—10.2
Rockford, Ill.	11.6	17.4	9th—10.6
Waukegan, Ill.	11.6	17.6	9th—10.8
Joliet, Ill.	11.6	17.6	9th—10.8
Chicago, Ill.	11.6	17.6	9th—10.8
Galesburg, Ill.	8.9	12	8th— 8.8
Quincy, Ill.	8.9	8.8	5th— 8.8
Springfield, Ill.	8.9	17.2	10th— 9.3
Peoria, Ill.	8.9	13.4	8th— 9.9 9th— 7.9

The district between Pittsburgh, Pa., and Cleveland, Ohio, and the Mahoning Valley, including such towns as Alliance, Youngstown, Warren, and Sharon, produces more iron and steel articles than any other region in the United States and has a higher density of traffic in these commodities, and generally, than between St. Louis and Keokuk and Illinois points. The following tables compare rates on certain iron and steel articles between St. Louis and Keokuk and Illinois points with interstate rates from Pittsburgh, Cleveland, Buffalo, and Chicago, for approximately equal distances:

COMPARISON OF RATES ON IRON AND STEEL ARTICLES CLASSIFIED IN LIST NO. 1 (AGRICULTURAL IMPLEMENTS, SHAPES, AND CASTINGS, ETC.) BETWEEN ST. LOUIS, MO., AND ILLINOIS DESTINATIONS, WITH RATES FROM PITTSBURGH, PA., AND CLEVELAND, OHIO, TO POINTS OF APPROXIMATELY EQUAL DISTANCE.

	Distance.	Rate.
	Miles.	*Cents.*
St. Louis, Mo., to Galesburg, Ill.	208	8.4
Pittsburgh, Pa., to Columbus, Ohio	191	12.6
St. Louis, Mo., to Quincy, Ill.	140	7.4
Pittsburgh, Pa., to Zanesville, Ohio	151	11.6
St. Louis, Mo., to Aurora, Ill.	257	9.5
Pittsburgh, Pa., to Toledo, Ohio	260	13.7
St. Louis, Mo., to Rockford, Ill.	[illegible]	9.5
Pittsburgh, Pa., to Cincinnati, Ohio	311	15.8
St. Louis, Mo., to Waukegan, Ill.	[illegible]	9.5
Pittsburgh, Pa., to Detroit, Mich.	[illegible]	15.7
St. Louis, Mo., to Springfield, Ill.	99	7.4
Pittsburgh, Pa., to Dennison, Ohio	90	9.5
St. Louis, Mo., to Peoria, Ill.	173	7.4
Pittsburgh, Pa., to Newark, Ohio	158	11.6
St. Louis, Mo., to Joliet, Ill.	247	9.5
Cleveland, Ohio, to Elkhart, Ind.	[illegible]	15.4
St. Louis, Mo., to Chicago, Ill.	284	9.5
Cleveland, Ohio, to South Bend, Ind.	271	15.4

COMPARISON OF RATES ON IRON AND STEEL ARTICLES CLASSIFIED IN LIST NO. 5 (WIRE, NAILS, ETC.) BETWEEN ST. LOUIS, MO., AND POINTS IN ILLINOIS, WITH RATES FROM CHICAGO, ILL., CLEVELAND, OHIO, AND PITTSBURGH, PA., TO DESTINATIONS OF APPROXIMATELY EQUAL DISTANCE.

	Distance.	Rate.
	Miles.	*Cents.*
Between St. Louis, Mo., and Aurora, Ill	257	11.6
From Cleveland, Ohio, to Rochester, N. Y	251	12.2
Between St. Louis, Mo., and Rockford, Ill	329	11.6
From Cleveland, Ohio, to Syracuse, N. Y	332	14.2
Between St. Louis, Mo., and Waukegan, Ill	329	11.6
From Cleveland, Ohio, to Chicago, Ill	330	15.9
Between St. Louis, Mo., and Joliet, Ill	247	11.6
From Cleveland, Ohio, to South Bend, Ind	271	15.4
Between St. Louis, Mo., and Chicago, Ill	284	11.6
From Cleveland, Ohio, to Elkhart, Ind	266	15.4
Between St. Louis, Mo., and Galesburg, Ill	208	8.5
From Cleveland, Ohio, to Fort Wayne, Ind	207	12.1
Between St. Louis, Mo., and Quincy, Ill	140	9
From Cleveland, Ohio, to Pittsburgh, Pa	135	10.5
Between St. Louis, Mo., and Springfield, Ill	90	8.4
From Chicago, Ill., to South Bend, Ind	86	9.5

COMPARISON OF RATES ON IRON AND STEEL ARTICLES CLASSIFIED IN LIST NO. 1 (AGRICULTURAL IMPLEMENTS AND CASTINGS AND SHAPES) BETWEEN KEOKUK, IOWA, AND POINTS IN ILLINOIS WITH RATES FROM CLEVELAND, OHIO, BUFFALO, N. Y., AND PITTSBURGH, PA., TO POINTS OF APPROXIMATELY EQUAL DISTANCE.

	Miles.	*Cents.*
Between Keokuk, Iowa, and Aurora, Ill	276	8.4
From Pittsburgh, Pa., to Van Wert, Ohio	288	15.2
Between Keokuk, Iowa, and Rockford, Ill	285	8.4
From Pittsburgh, Pa., to Toledo, Ohio	290	13.7
Between Keokuk, Iowa, and Waukegan, Ill	300	8.4
From Pittsburgh, Pa., to Detroit, Mich	329	15.7
Between Keokuk, Iowa, and Joliet, Ill	294	8.4
From Cleveland, Ohio, to South Bend, Ind	271	15.2
Between Keokuk, Iowa, and Chicago, Ill	264	8.4
From Buffalo, N. Y., to Fremont, Ohio	266	13.7
Between Keokuk, Iowa, and Galesburg, Ill	86	5.8
From Pittsburgh, Pa., to Alliance, Ohio	83	6.3
Between Keokuk, Iowa, and Springfield, Ill	127	5.8
From Pittsburgh, Pa., to Canton, Ohio	101	9.5
Between Keokuk, Iowa, and Quincy, Ill	41	5.8
From Pittsburgh, Pa., to Youngstown, Ohio	65	5.3
Between Keokuk, Iowa, and Peoria, Ill	113	5.8
From Pittsburgh, Pa., to Massillon, Ohio	109	9.5

COMPARISON OF RATES ON IRON AND STEEL ARTICLES CLASSIFIED IN LIST NO. 5 (WIRE, NAILS, ETC.) BETWEEN KEOKUK, IOWA, AND POINTS IN ILLINOIS WITH RATES FROM CLEVELAND, OHIO, BUFFALO, N. Y., CHICAGO, ILL., AND PITTSBURGH, PA., TO POINTS OF APPROXIMATE EQUAL DISTANCE.

	Miles.	*Cents.*
Between Keokuk, Iowa, and Aurora, Ill	276	11.6
From Buffalo, N. Y., to Fremont, Ohio	266	13.7
Between Keokuk, Iowa, and Rockford, Ill	285	[1] 11.6
From Cleveland, Ohio, to South Bend, Ind	271	15.4
Between Keokuk, Iowa, and Waukegan, Ill	300	11.6
From Buffalo, N. Y., to Toledo, Ohio	296	13.7
Between Keokuk, Iowa, and Joliet, Ill	294	11.6
From Cleveland, Ohio, to Elkhart, Ind	256	15.4
Between Keokuk, Iowa, and Chicago, Ill	264	11.6
From Buffalo, N. Y., to Sandusky, Ohio	243	13.7
Between Keokuk, Iowa, and Galesburg, Ill	86	8.9
From Chicago, Ill., to South Bend, Ind	86	9.5
Between Keokuk, Iowa, and Springfield, Ill	127	8.9
From Pittsburgh, Pa., to Canton, Ohio	101	9.5
Between Keokuk, Iowa, and Peoria, Ill	113	8.9
From Pittsburgh, Pa., to Massillon, Ohio	109	9.5

[1] Westbound.

Iron and steel articles are grouped into the same 11 lists for the application of commodity rates out of Chicago. From the latter

city a few less-than-carload rates are in effect. From Gary and Hammond, Ind., to Illinois points the Chicago rates are applied; and the 5 per cent increase, although originally made in these rates, was not continued because, as defendants contend, of fourth section conditions, which would not exist were the 5 per cent increase in the Illinois state rates to go into effect.

FRUITS AND VEGETABLES.

The general basis of rates on fruits and vegetables between St. Louis and Illinois points was formerly the same as the basis of rates between points in Illinois—the distance tariff of the State Public Utilities Commission of Illinois—but because the carriers with the longer routes met the rates by the short routes, observing the rates of the short routes as maxima at intermediate points, the actual rates applied were considerably less than they would be were the distance tariff strictly adhered to. At present the rates are as described plus the 5 per cent increase.

Though fruit and vegetables move in all directions in this territory, Chicago is the great receiving market. St. Louis obtains shipments of sweet potatoes, rhubarb, tomatoes, cucumbers, beans, and berries from southern Illinois and apples from the northern part of the state. Irish potatoes are produced in western Illinois, and apples move from Calhoun county and the central part of the state.

The great volume of the movement is in carload lots, but less-than-carload shipments are not uncommon. This fruit and vegetable traffic is generally accorded expedited service, and not infrequently refrigerator cars are employed. These, the defendants testify, involve a charge for maintenance of approximately 50 per cent more than box cars, and on the Illinois Central entail an empty movement of about 50 per cent. The damage claims on these commodities are considerable, in 1914 the Chicago & Alton paying out for this item 3.3 per cent of its entire revenue from the traffic; the Chicago & Eastern Illinois, 4.06 per cent; the Illinois Central for 1915, 5.8 per cent.

From southern Illinois to Chicago there is considerable movement of fruits and vegetables in "pool" cars, loaded with less-than-carload shipments from various shippers, consolidated into carload lots by shipping associations and forwarded on the basis of carload rates. The defendants testify that they perform some extra terminal service at Chicago to facilitate the unloading of these pool cars. In 1914, on 13 specified railroads,[1] with 8,150 miles in Illinois—two-thirds of the mileage of the state—the average haul

[1] A., T. & S. F.; C., B. & Q.; C., T. H. & S. E.; C. & A.; C. G. W.; C., C., C. & St. L.; T., P. & W.; C., M. & St. P.; C. & E. I.; C. & N. W.; C., R. I. & P.; I. C.; L. E. & W.

per ton of 20,652 carloads of fruit and vegetables is given by the defendants as 154 miles; the average loading 14.3 tons, the average rate 7.2 cents, the average car-mile revenue 10.5 cents, the average ton-mile revenue, 9.4 mills.

For 150 miles the present carload rate within Illinois on berries is 18.1 cents; the present rate for that distance from St. Louis to an Illinois point is 19 cents, which is less than the rate for a like distance in Indiana, Michigan, Missouri, Wisconsin, Iowa, Pennsylvania, and New York.

Below is a comparison for representative distances of the proposed carload rates on certain fruits and vegetables between Illinois points with the present rates within Illinois and with rates in other localities, both state and interstate:

Commodity and where rates apply.	Distance.					
	50	100	150	200	300	400
Berries:						
Illinois, proposed	11.9	15.8	19	20.6	23.7	26
Illinois, present [1]	11.3	15	18.1	19.6	22.6	24.8
Indiana	23.1	25.7	32.6	37.3	42	......
Michigan [2]	13.7	20	21	26.3	32.6	34.7
Missouri [3]	16	22.5	28	33	39	42.5
Wisconsin	19.5	25	27.5	33	45	......
Iowa	13.3	16	19.5	23	30	35
Pennsylvania	23.1	31.5	37.8	39.3	41.3	47.3
New York	18.9	25.2	29.4	37.8	44.1	......
Interstate, Chicago and Iowa [4]	......	......	......	27	35	43
Interstate, Kentucky to Chicago	......	......	......	......	......	36
Apples, pears:						
Illinois, proposed	7.1	9.3	10.7	12.2	14.1	15.4
Illinois, present [1]	6.8	8.9	10.2	11.6	13.4	14.7
Indiana	9.5	9.5	11.6	13.7	15.8	......
Michigan	7.9	10	11.6	15.2	18.4	20
Missouri [3]	7.9	10.9	13.4	15.4	18.4	20.9
Wisconsin	11.5	15	18	19.5	22.5	......
Iowa	7	8.4	11.3	14.2	20	25
Pennsylvania	8.4	10.5	14.7	15.9	16.9	18.9
New York	7.9	10	12.1	14.7	18.9	......
Interstate, Chicago and Iowa [4]	......	......	......	16.1	21	25
Interstate, Kentucky to Chicago	......	......	......	......	......	34
Potatoes:						
Illinois, proposed	7.1	9.3	10.7	12.2	14.1	15.4
Illinois, present [1]	6.8	8.9	10.2	11.6	13.4	14.7
Indiana	9.5	9.5	11.6	13.7	15.8	......
Michigan	7.9	10	11.6	15.2	18.4	20
Missouri	9	12	15	17	20	......
Wisconsin	7	9	11	14	15.5	......
Iowa	6	7.2	9.2	11.1	15	20
Pennsylvania	8.4	10.5	14.7	15.9	16.9	18.9
New York	7.9	10	12.1	14.7	18.9	......
Interstate, Chicago and Iowa [4]	......	......	......	12.1	16	20
Interstate, Kentucky to Chicago	......	......	......	......	......	23
Rhubarb; asparagus; onions, with tops:						
Illinois, proposed	7.1	9.3	10.7	12.2	14.1	15.4
Illinois, present [1]	6.8	8.9	10.2	11.6	13.4	14.7
Indiana	12.6	13.1	14.7	16.3	17.9	......
Michigan	10.5	13.7	15.8	20	24.2	26.3
Missouri	11	15	20	22	24	......
Wisconsin	11.5	15	18	19.5	22.5	......
Iowa	7	8.4	11.3	14.2	20	25
Pennsylvania	8.4	10.5	14.7	15.9	16.9	18.9
New York	7.9	10	12.1	14.7	18.9	......
Interstate, Chicago and Iowa [4]	......	......	......	16.1	21	25
Interstate, Kentucky and Chicago.[4]	......	......	......	......	......	35–36 30

[1] Illinois intrastate rates not filed.
[2] Berries, carload, third class, Morris's I. C. C. 632.
[3] Approved by Missouri Public Utilities Commission as to apples.
[4] Prescribed by Interstate Commerce Commission in Dockets Nos. 3068, 4447, and 3464, 29 I. C. C., 539.

Commodity and where rates apply.	Distance.					
	50	100	150	200	300	400
Tomatoes:						
Illinois, proposed	7.1	9.3	10.7	12.2	14.1	15.4
Illinois, present[1]	6.8	8.9	10.2	11.6	13.4	14.7
Indiana	12.6	13.1	14.7	16.3	17.9	......
Michigan	10.5	13.7	15.8	20	24.2	26.3
Missouri	11	15	20	22	24	......
Wisconsin	11.5	15	18	19.5	22.5	......
Iowa	6	7.2	9.2	11.1	15	20
Pennsylvania	8.4	10.5	14.7	15.9	16.9	18.9
New York	7.9	10	12.1	14.7	18.9	......
Interstate, Chicago and Iowa[2]	......	......	......	16.1	21	25
Interstate, Kentucky and Chicago	......	......	......	......	......	30

[1] Illinois interstate rates not filed.
[2] Prescribed by Interstate Commerce Commission in Dockets Nos. 3068, 4407, and 3464, 29 I. C. C., 539.

In *Ponchatoula Farmers' Asso.* v. *I. C. R. R. Co.*, 19 I. C. C., 513, a maximum carload rate on lettuce from Ponchatoula, La., to Chicago, Ill., of 55 cents per 100 pounds was prescribed. The distance is 870 miles and the ton-mile yield 12.6 mills. The rates on beans of 52 cents and on cabbage of 44 cents were not disturbed. These yielded 11.9 mills and 10 mills, respectively.

In *Fruits and Vegetables*, 43 I. C. C., 291, inter alia, certain carload rates on fruits and vegetables were approved from points in the south, east of the Mississippi River, to points north. The Illinois Central and the Louisville & Nashville carry large quantities of fruits and vegetables. Below are a few carload rates of these carriers, taken as representative of the rates of all the lines serving the east side territory:

From—	To—	Miles.	Potatoes.		Tomatoes.		Apples.	
			Rate.	Revenue per ton-mile.	Rate.	Revenue per ton-mile.	Rate.	Revenue per ton-mile.
			Cents.	*Mills.*	*Cents.*	*Mills.*	*Cents.*	*Mills.*
New Orleans	Memphis	395	30	15.2	41	20.7	42	21.2
Group 2 (Illinois Central)	......do	289	28	19.3	38	19.2	39	26.9
Albany, Ga	Chicago	898	53	11.8	83	18.4	....	....
Ocala, Fla	Baltimore	895	48.5	10.8	93	20.7	....	....

Comparing the earnings per ton-mile of the rates from New Orleans to Memphis, 395 miles, on potatoes, 15.2 mills; on tomatoes, 20.7 mills; and on apples, 21.2 mills, with the earnings under the rates between St. Louis and Illinois points for 150 miles which are, on potatoes, 14.2 mills; on tomatoes, 14.2 mills; and on apples, 14.2 mills, we find additional evidence bearing on the level of rates here involved.

PACKING-HOUSE PRODUCTS AND FRESH MEATS.

There are packing houses both in St. Louis and East St. Louis, and also many at Chicago. There is a heavy movement of packing-

house products and fresh meats from East St. Louis to Chicago and a lesser movement to interior Illinois points, such as Decatur, Springfield, and Jacksonville. St. Louis also ships to these destinations, though in smaller volume. There is no packing plant at Keokuk.

These commodities generally move in private cars owned by the packers, for which the railroads pay by way of mileage three-fourths cent per mile for both loaded and empty movement—the empty movement of these packers' cars is nearly 100 per cent. There are commodity rates between St. Louis and Keokuk and practically the entire state of Illinois on a basis 5 per cent higher than the rate within Illinois. Between St. Louis and Chicago the rate on packing-house products is 10.5 cents and between East St. Louis and Chicago, 10 cents; on fresh meats 14.2 cents and 13.5 cents, respectively. The St. Louis rates, the defendants contend, are compelled by "fierce competition," and they allege that there are no lower rates in the country on these commodities, save only the Illinois state rates.

Below is a comparison between rates on packing-house products and fresh meats from St. Louis to Chicago with rates in other territories:

Commodity rates on packing-house products and fresh meats.

	Miles.	Fresh meat rate.		Packing-house products rate.	
		Commodity rate (cents).	Class.	Commodity rate (cents).	Class.
St. Louis to Chicago	283	14.2	4th—23.1	10.5	5th—18.5
Kansas City to St. Louis	277	18	3d—35	18	5th—22
Chicago to Cincinnati	286	21	....	12.6	5th—15.8
St. Louis to Albia	271	20	3d—32	15	5th—19
Chicago to Detroit	272	21	....	12.6	5th—13.7
St. Louis to Monticello	137	14.2	4th—18.3	10.5	5th—14.7
St. Louis to Moberly	147	14.5	3d—29	15	5th—17

The defendants showed that the rates on packing-house products and the rates on fresh meats between St. Louis and Chicago are lower than the rates on packing-house products in official classification territory; lower than the rates between Chicago and Cincinnati, or Louisville, or Detroit, lower than the rates between East St. Louis and Evansville, or Louisville, lower than those between Milwaukee and Indianapolis. Further, that the only rate that could be found lower was the rate of $9\frac{1}{2}$ cents on packing-house products from Chicago to Indianapolis, a distance of 183.5 miles. The rates on fresh meats and packing-house products between St. Louis and Keokuk and Illinois points generally are lower than the rates for similar distances in central freight association territory.

Below the St. Louis-Chicago rates on packing-house products and fresh meats are compared with other interstate rates on the same commodities:

COMPARISON OF RATES ON PACKING-HOUSE PRODUCTS.

	Distance.	Rate.	Minimum weight.	Earnings.	Earnings per ton-mile.	Earnings per car-mile.
Chicago to—			*Pounds.*			
St. Louis	[1] 290.5	10.5	26,000	$27.30	$0.0072	$0.0939
East St. Louis	[1] 287.2	10	26,000	26.00	.0069	.0904
Cincinnati	[2] 285.3	12.6	30,000	37.80	.0087	.1325
Louisville	[3] 324.3	13.6	30,000	40.80	.0063	.1258
Evansville	[4] 266	12.6	30,000	37.80	.0094	.1421
Detroit	[5] 283.4	12.6	30,000	37.80	.0081	.1333
Indianapolis	[6] 183.5	9.5	30,000	33.30	.0108	.1714
East St. Louis to—						
Evansville	[7] 162	12.6	30,000	37.80	.0155	.2333
Louisville	[4] 266	12.6	30,000	37.80	.0094	.1421
Attica	[8] 208.7	12.6	30,000	37.80	.0121	.1811
Indianapolis	[9] 238	10.5	30,000	31.50	.0090	.1323
Milwaukee to Indianapolis	[10] 268.5	11.6	30,000	41.76	.0086	.1518

COMPARISON OF RATES ON FRESH MEATS.

Chicago to Indianapolis	[6] 183.5	16.8	20,000	$33.60	$0.0183	$0.1831
East St. Louis to Indianapolis	[9] 238	17.3	20,000	34.60	.0145	.1457
Milwaukee to Indianapolis	[10] 268.5	20	20,000	42.00	.0156	.1564
Indianapolis to East St. Louis	[11] 236	25.2	20,000	50.40	.0211	.2266
Chicago to—						
St. Louis	[1] 290.5	142	20,000	28.40	.0097	.0977
East St. Louis	[1] 287.2	135	20,000	27.00	.0091	.0912
Cincinnati	[2] 285.3	21	20,000	42.00	.0146	.1472
Louisville	[3] 324.3	22	20,000	44.00	.0134	.1356
Detroit	[5] 283.4	21	20,000	42.00	.0151	.1483
East St. Louis to Louisville	[4] 266	215	28,000	60.20	.0162	.2262

[1] C. & E. I. R. R.
[2] C. & O. R. R.
[3] C., I. & L. R. R.
[4] L. & N.-Southern Ry.
[5] N. Y. C. and M. C.
[6] Monon.
[7] L. & N. Ry.
[8] C. & E. I.-Wabash.
[9] Vandalia R. R.
[10] C., M. & St. P.-C. & E. I.
[11] Big Four.

LIVE STOCK.

There is some movement of live stock between St. Louis and Illinois points, and the basis for the commodity rates is the Illinois scale of commodity rates plus 5 per cent, except for bridge tolls where these are not absorbed. The defendants showed that for the year ended June 20, 1914, on the 13 roads referred to above the average weight of the load per car of live stock was 11.46 tons within Illinois, the average haul per car 124 miles, the average haul per ton 114.6 miles, the average revenue per ton-mile 15 mills and per car-mile 15.87 cents. The average rate in Illinois for the average haul was 8.6 cents, as compared with 11.6 cents on cattle and 11.8 cents on hogs for the same haul in Iowa. The general basis of all live-stock rates in central freight association territory, except for horses, is fifth class—sometimes fourth class—but the rates used are higher than those within Illinois. The following table gives certain interstate rates in this general territory:

From—	To—	Miles.	Cattle, sheep, hogs.	Horses.
			Cents.	*Cents.*
Napoleon, Ohio	Toledo, Ohio	36	7.4	10
New Haven, Ind	....do	88.5	8.9	21
Westville, Ind	Chicago, Ill	55	7.9	12.7
Lakeville, Ind	....do	87	9.5	21
Topeka, Ind	....do	126	11	26.3
Eden, Wis	....do	139	13	....
Lodi, Wis	....do	149	[1] 17.5	....
Barton, Wis	....do	119	....	12.2
Mendota, Wis	....do	135	[3] 16.5	....
Walcott, Iowa	....do	195	[3] 15 [1] 16	....
Malcom, Iowa	....do	293	[3] 21 [1] 21	....
Mitchell, Iowa	....do	340	[3] 22.5 [1] 24	....
Farber, Mo	....do	308	[3] 18 [1] 20.5	....

[1] Hogs. [2] Sheep. [3] Cattle.

From points on the Missouri River it is usual to make the same rates on live stock to East St. Louis as to St. Louis, but from points in Missouri 100 to 150 miles distant from St. Louis the rates to St. Louis are lower than to East St. Louis, due, the defendants allege, to the Missouri state rates.

Below are shown live-stock scales within several western states offered in comparison with the Illinois rates:

Comparative statement of live-stock rates.

Miles.		Western states scales.							Okla-homa-Texas scale, I. C. C. case 4262.	Illinois.[1]	C. F. A. live-stock scale.[2]	Missouri.			Wis-consin.
		Arkansas.	Iowa.	Minne-sota.	Nebraska.	Kansas.	Okla-homa.	Average.				Old.	New.	Jan. 1, 1916.	
25	Horses	5.2	6.8	7.0	6.8	6.8	6.9	6.6	....	7.1	7.5	5.0	3.8	7.1	6.3
	Cattle	5.0	6.6	6.7	6.8	5.5	7.0	6.3	6.0	6.5	....	5.5	4.0	6.6	5.7
	Hogs	6.8	7.0	7.2	8.5	6.0	7.7	7.1	7.0	7.2	....	6.0	5.1	7.1	7.5
50	Horses	6.9	8.7	10.25	8.8	8.8	9.0	8.7	....	8.5	....	8.5	5.7	9	11.0
	Cattle	5.9	8.0	9.8	8.92	7.5	9.5	8.3	8.75	7.7	9.0	8.5	6.0	8.1	10.0
	Hogs	7.5	8.7	10.5	11.47	10.0	10.2	9.07	10.0	9.0	....	10.0	7.6	9	10.0
75	Horses	8.6	10.0	11.3	10.9	10.9	11.0	10.4	....	9.6	....	10.5	6.6	10.5	13.8
	Cattle	7.3	9.0	10.9	11.05	10.0	11.5	10.0	11.0	8.7	10.0	10.5	7.0	9.1	12.5
	Hogs	9.2	10.2	11.7	14.02	12.0	12.2	11.5	12.5	10.6	....	12.0	8.9	10.5	12.5
100	Horses	10.3	11.0	12.5	14.5	14.5	12.6	12.6	....	10.4	....	12.5	7.6	11.5	16.5
	Cattle	8.6	10.0	12.0	13.6	11.5	13.0	11.5	12.5	9.5	11.5	11.0	8.0	10.0	15.0
	Hogs	10.9	11.0	12.8	17.0	14.0	14.2	13.3	14.25	11.7	14.0	13.0	10.1	11.5	15.0
125	Horses	12.5	11.7	13.5	15.9	15.9	15.5	14.2	....	11.1	....	14.5	8.5	12.5	18.2
	Cattle	10.0	10.6	13.0	14.87	12.0	15.5	12.7	13.75	10.1	12.5	12.0	9.0	10.8	16.5
	Hogs	12.6	11.8	14.0	18.7	15.5	17.7	15.1	15.75	12.4	....	14.0	11.4	12.5	16.5
150	Horses	13.8	12.5	14.8	17.3	17.3	15.5	15.2	....	11.8	....	16.5	9.5	13.4	19.3
	Cattle	10.5	11.3	14.2	16.15	14.0	15.5	13.6	15.0	10.8	13.5	13.0	10.0	11.5	17.5
	Hogs	13.2	12.8	15.1	20.0	16.5	17.7	15.9	17.25	13.2	....	15.0	12.6	13.4	17.5
175	Horses	14.6	13.3	15.9	18.3	18.3	16.8	16.2	....	12.6	....	18.0	10.4	14.2	20.9
	Cattle	11.3	12.0	15.3	17.85	15.0	17.0	14.8	16.25	11.4	14.0	14.0	11.0	12.1	19.0
	Hogs	14.3	13.8	16.3	22.52	17.5	19.5	17.3	18.75	14.0	....	16.0	13.9	14.2	19.0
200	Horses	15.5	14.0	17.0	19.3	19.3	17.9	17.2	....	13.3	....	19.5	11.4	15.0	22.0
	Cattle	13.2	12.6	16.3	18.7	16.0	18.0	15.8	17.5	12.1	14.75	15.0	12.0	12.7	20.0
	Hogs	16.6	14.8	17.5	23.8	19.0	20.7	18.7	20.0	14.8	....	17.5	15.2	15.0	20.0
225	Horses	15.5	14.9	17.7	20.5	20.5	18.9	18.0	....	14.1	....	22.0	12.3	15.9	23.7
	Cattle	15.0	13.5	17.0	19.97	17.0	19.2	16.9	19.0	12.8	15.25	16.0	13.0	13.3	21.5
	Hogs	19.0	16.1	18.2	26.5	20.5	22.2	20.3	21.75	15.2	....	19.0	16.4	15.9	22.0
250	Horses	15.5	15.5	18.25	21.4	21.3	19.6	18.6	....	14.7	....	24.0	13.3	16.5	24.8
	Cattle	15.0	14.0	17.4	20.82	17.0	20.0	17.4	20.0	13.4	16.0	16.5	14.0	13.7	22.5
	Hogs	19.0	16.9	18.6	26.77	21.0	23.2	20.9	23.0	15.5	....	19.5	17.7	16.5	23.0
275	Horses	17.2	16.4	18.9	22.5	22.5	20.5	19.7	....	15.6	....	25.5	14.2	17.4	26.4
	Cattle	15.9	14.8	18.1	22.52	18.5	21.2	18.5	21.5	14.1	16.5	17.0	15.0	14.4	24.0
	Hogs	20.1	18.2	19.4	28.47	21.5	24.7	22.1	24.75	15.9	....	20.0	19.0	17.4	24.0
300	Horses	19.8	17.0	19.25	23.3	23.3	21.1	20.6	....	16.1	....	26.5	15.2	18.0	27.5
	Cattle	15.9	15.4	18.5	23.37	19.0	22.0	19.0	22.5	14.7	17.25	17.5	16.0	14.7	25.0
	Hogs	20.1	19.0	19.8	23.92	22.0	26.7	21.8	25.75	16.2	....	20.5	20.2	18.0	26.0

[1] St. Louis-Illinois rates generally 5 per cent over these rates.
[2] Distance scale, single line, on cattle, calves d. d., hogs d. d., sheep, lambs, and goats d. d., between points in C. F. A. territory, prescribed in *Eastern Live Stock Case*, 36 I. C. C., 675.

Old rates in Missouri were in effect prior to July, 1914, and carriers are seeking their restoration.
Present rates in Missouri are published under protest by the carriers as confiscatory.

Below the Illinois state rate from Champaign to Chicago is compared with rates from Champaign to Indianapolis and from Indiana points to Indianapolis:

From—	To—	Miles.	Cattle.	Sheep.	Hogs.	Horses.
Champaign, Ill.	Chicago	[1] 126	10.7	17.3	13.2	11.8
Do	Indianapolis	[2] 118	[3] 11.6	11.6	[3] 11.6	[3] 27.9
Lebanon, Ind	do	30	8	(4)	(4)	(4)
Clarks Hill, Ind	do	50	11.1			
La Fayette, Ind	do	65	15			
Raub, Ind	do	105	15			

[1] Illinois Central.
[2] Cleveland, Cincinnati, Chicago & St. Louis.
[3] Used class rates.
[4] Interstate class rates:

	Cattle, sheep, and hogs.	Horses.
Lebanon, Ind., to Indianapolis	7.4	11.6
Clarks Hill, Ind., to Indianapolis	9.5	21
La Fayette, Ind., to Indianapolis	9.5	21
Raub, Ind., to Indianapolis	11	26.3

Special equipment is necessary for live stock, and the return loading is light. Within Illinois the 36-foot car is chiefly used for handling live stock and the minima prescribed are: Cattle and horses, 22,000 pounds; hogs, single deck, 17,000 pounds, double deck, 22,000 pounds; sheep, single deck, 14,000 pounds, double deck, 19,000 pounds. Caretakers of live stock are given free transportation.

GRAIN AND GRAIN PRODUCTS.

St. Louis and East St. Louis for a number of years past, with regard to grain and grain products, have been treated as one market, and the rates to St. Louis and East St. Louis from points in Illinois outside the radius of approximately 100 miles were the same. The two cities have one grain exchange.

In the early part of 1914 there was a general increase of about 1 cent per 100 pounds in the rates on grain and grain products from points in Illinois to all of the primary markets, both in Illinois, where the traffic was interstate, and outside, including St. Louis. Succeeding the action of the Commission in *Grain Rates in Central Freight Association Territory*, 28 I. C. C., 549, holding the increase interstate justified, this same increase was denied as to East St. Louis by the State Public Utilities Commission of Illinois, but an appeal now lies in the supreme court of Illinois. Following *The Five Per Cent Case*, *supra*, an increase of 5 per cent was made in all the commodity rates on grain and grain products into St. Louis. The bulk

of the traffic—about 80 per cent, say the defendants—in grain and grain products in Illinois moves on specific commodity rates. For shorter hauls and to the mills the Illinois distance scale is the basis. Also, for very short hauls into St. Louis and East St. Louis this scale is applied; but as the distance increases large rate groups are made to all primary markets in Illinois and to St. Louis. Grain in Illinois is divided into wheat and commodities taking wheat rates, coarse grain and grain products taking coarse grain rates. Grain, as a rule, loads more heavily than grain products. The defendants contend that to avoid discriminations St. Louis and East St. Louis should still be grouped together for grain as formerly.

The average haul of grain to the St. Louis and East St. Louis market was given as 145 miles, the average rates for the distance 7 cents per 100 pounds to St. Louis and 6 cents per 100 pounds to East St. Louis, while for corresponding distance the rate into Indianapolis is 8 cents; from Iowa City, Iowa, to Peoria, Ill., 11 cents; from Cedar Point, Kans., to Kansas City, Mo., 12 cents; from Boyd, Minn., to Minneapolis, 9½ cents; from Muscoda, Wis., to Milwaukee, 9½ cents; all indicating that the average general level of rates on grain from Illinois points into St. Louis and East St. Louis is below that of rates into other primary markets in the same general territory.

Following is a table taken from one of the defendants' exhibits, which illustrates the existing differences in the corn and wheat rates on eight roads as between St. Louis and East St. Louis and points in Illinois for distances approximating the average haul:

Corn and wheat from—	Distance.	Rate to—	
		St. Louis.	East St. Louis.
C. & A.:	*Miles.*	*Cents.*	*Cents.*
Atlanta, Ill	138	[1] 7	[2] 6
McLean, Ill	143	[1] 7	[2] 6
Shirley, Ill	152	[1] 7	[2] 6
C., P. & St. L.:			
Kilbourne, Ill	149	[3] 7	[2] 6
Oakford, Ill	145	[3] 7	[2] 6
Atterbury, Ill	141	[3] 7	[2] 6

[1] I. C. C. A-550. [2] Ill. Pub. Util. Com. 118. [3] I. C. C. 1006.

The following table illustrates rates on grain and grain products made under the Illinois distance tariff in comparison with the commodity rates from St. Louis and East St. Louis to Illinois points:

	Miles.	Wheat.	Flour.	Other grain products.
		Cents.	*Cents.*	*Cents.*
Illinois distance tariff	30	5.1	5.1	4.6
East St. Louis and Godfrey, Ill	26	4	4	4
St. Louis and Godfrey, Ill		5	5	5
Illinois distance tariff	40	5.6	5.6	5
East St. Louis and Shipman, Ill	40	4.8	4.8	4.8
St. Louis and Shipman, Ill		6	6	6
Illinois distance tariff	80	7.4	7.4	6.8
East St. Louis and Upton, Ill	79	6	6	6
St. Louis and Upton, Ill		7.9	7.9	7.9
Illinois distance tariff	100	8	8	7.3
East St. Louis and Sherman, Ill	100	6	6	6
St. Louis and Sherman, Ill		7	7	7
Illinois distance tariff	150	9.2	9.2	8.4
East St. Louis and Pekin, Ill	148	6	6	6
St. Louis and Pekin, Ill		7	7	7
Illinois distance tariff	200	10.4	10.4	9.5
East St. Louis and Odell, Ill	198	7	7	7
St. Louis and Odell, Ill		8	8	8
Illinois distance tariff	275	11.7	11.7	10.6
East St. Louis and Brighton Park, Ill	273	8	8	8
St. Louis and Brighton Park, Ill		9	9	9

The defendants submitted statistics on grain within Illinois as to the 13 roads referred to above. They showed that for the year ended June 30, 1914, the average haul per car was 103.5 miles; the average net weight per car, 33.2 tons; the car-mile revenue, 32 cents; the net ton-mile revenue, 10.9 mills; the revenue per 100 pounds on the weight of freight, 4.98 cents. As to flour and other grain products for this period, the average haul per car was 91 miles; the average net weight per car, 20 tons; the revenue per car-mile, 19.5 cents; the revenue per net ton-mile, 8.9 mills; and the revenue per 100 pounds on weight of freight, 4.43 cents. From this it appears that the returns from this grain traffic in Illinois are low.

PETROLEUM AND ITS PRODUCTS.

The general basis of commodity rates on petroleum and its products from St. Louis to points in Illinois is in relation to that of the rates out of Wood River, Ill. Between points in Indiana, between points in Ohio, between points in Ohio and points in Indiana, and between points in these states and points in Illinois the general basis on this commodity and its products is 90 per cent of fifth class, official classification, which is the general basis in official classification territory. The St. Louis and Keokuk-Illinois rates are on the same basis as the rates between points in Illinois, save for the additional 5 per cent. The commodity rates in Illinois bear no fixed relation to the Illinois class rates. The defendants' witness stated that they were from 60 to 80 per cent of the 90 per cent of the fifth-class official classification scale. Petroleum generally moves in privately owned cars upon which a mileage of

three-fourths of a cent a mile on both the loaded and empty movements is paid to the owners.

Below is a table showing the present rates on petroleum and its products from St. Louis to points in Illinois compared with the rates on the same commodities between points within Illinois and from and to points in central freight association territory:

Mileage block.	From—	To—	Actual distance.	Rates.
			Miles.	*Cents.*
10	St. Louis, Mo.	Nameoki, Ill.	10.8	1.1
	Wood River, Ill.	Dorseys, Ill.	8.2	5.2
	Toledo, Ohio	Lime City, Ohio	9	5.2
50	St. Louis, Mo.	Bunker Hill, Ill.	47.6	5.2
	Wood River, Ill.	Litchfield, Ill.	49.8	5.3
	Whiting, Ind	Union Center, Ind	47	8.6
100	St. Louis, Mo.	Shelbyville, Ill	98	7.4
	Wood River, Ill.	Middlesworth, Ill.	97	7.7
	Lima, Ohio	Alexandria, Ind	101	9.5
150	St. Louis, Mo.	Dudley, Ill	150	7.8
	Wood River, Ill.	Conlogue, Ill.	148	7.8
	Lima, Ohio	Frankfort, Ind	145	10.9
175	St. Louis, Mo.	Chrisman, Ill.	173	9.2
	Lawrenceville, Ill	Schneider, Ind	177	9.5
	Whiting, Ind	Stanley, Ohio	174	11.3
200	St. Louis, Mo.	Danville, Ill.	198	9.3
	Lawrenceville, Ill	Hartsdale, Ind	200	9.5
	Toledo, Ohio	Lockland, Ohio	201	11.8
275	St. Louis, Mo.	Momence, Ill.	271	10.5
	Wood River, Ill.	Morris, Ill	278	10.5
	Cleveland, Ohio	Daleville, Ind	274	12.4

The rates on petroleum from Lawrenceville and Wood River to points in Illinois are lower than the rates prescribed by the Railroad & Warehouse Commission of Illinois, the predecessor of the public utilities commission.

AGRICULTURAL IMPLEMENTS.

Agricultural implements between St. Louis and Keokuk and Illinois points move chiefly on commodity rates, and the St. Louis rates, distance considered, are generally 5 per cent in excess of the rates between Illinois points. Under Illinois classification these articles are rated sixth class with a carload minimum of 20,000 pounds. In official classification the rating is fifth class with a minimum of 24,000 pounds, and in western and Iowa classification the rating is class A, with minimum of 24,000 pounds. In official and central freight association territories these articles are handled almost entirely on a class basis, while within Illinois the defendants estimate that from 90 to 95 per cent of the movement is on commodity rates lower than fifth class. For agricultural implements and buggies shippers frequently order large specially prepared equipment, such as furniture or high vehicle cars, more expensive than the ordinary box car. These furniture or high vehicle cars have a large empty return movement.

On all of the carload traffic in this commodity in Illinois on the 13 roads for 1914, the average haul per car was given as 101.9 miles;

the average load per car, 14.35 tons; the loaded car-mile revenue, 18.8 cents; and the net ton-mile revenue, 13 mills. On the Chicago, Burlington & Quincy system in 1914, the average haul on agricultural implements was given as 285.8 miles, and the average car-mile earnings for that distance were 19.27 cents. The rate between St. Louis and Chicago on these commodities is 16.3 cents. If they moved under the Illinois class rate it would be 16.5 cents.

Below is a table compiled from one of the defendants' exhibits of rates on agricultural implements between St. Louis and Illinois points compared with other state and interstate rates and the earnings under those rates. Here are also compared rates obtained by an average of the rates on these commodities under the distance tariff in Iowa, Missouri, Minnesota, and Wisconsin:

Route.	Miles.	Present rate.	Gross per car earnings (24,000 pounds).	Gross earnings per car-mile.	Increase in rate and per car earnings if average of state rates shown in Patterson's Exhibit No. 4, p. 373, Carriers' Topical Abstract of Evidence in I. P. U. C. 2006 used.		
					Rate.	Gross earnings per car (24,000 pounds).	Increase in revenue per car.
Between Chicago and—		Cents.		Cents.	Cents.		
St. Louis	281	16.3	$39.12	13.9	24	$57.60	$18.48
East St. Louis	278	15.5	37.20	13.3	24	57.60	20.40
Quincy [1]	263	13.7	31.20	11.9	24	57.60	16.40
Keokuk [1]	249	13.7	32.88	13.2	21.5	51.60	18.72
Hamilton [1]	272	13.7	31.20	9.2	24	57.60	26.48
Burlington [1]	206	13.7	32.88	15.9	20.3	48.72	15.84
Between Peoria and—							
St. Louis	173	11	26.40	15.2	17.2	41.28	14.88
East St. Louis	170	11	25.20	14.8	17.2	41.28	14.88
Quincy	153	11	25.20	16.4	17.2	41.28	16.08
Hamilton	112	11	25.20	22.5	13.8	33.12	7.92
Keokuk	113	11	26.40	19	13.8	33.12	6.72
Burlington	96	11	26.40	27.4	13.1	31.44	5.04
Between Ottawa and—							
St. Louis	251	16.3	39.12	11.1	24	57.60	18.48
East St. Louis	249	15.5	37.20	12.4	21.5	51.60	14.40
Quincy	217	13.7	25.20	11.6	20.3	48.72	23.52
Hamilton	189	11	25.20	13.2	18.9	45.36	20.16
Keokuk	191	13.7	26.40	13	20.3	48.72	11.32
Burlington	160	13.7	26.40	16.5	17.2	41.28	14.88
Between Canton and—							
St. Louis [2]	168	13.7	32.88	16.5	18.9	57.60	12.80
East St. Louis [2]	165	13.7	31.20	18.9	17.2	41.28	10.08
Quincy	122	11	25.20	20.6	13.8	33.12	7.92
Hamilton	83	11	25.20	30.3	13.1	31.44	6.24
Keokuk	85	11	26.40	20.9	13.1	31.44	5.04
Burlington	83	11	26.40	31.8	13.1	31.44	5.04
Between Rock Island and Moline and—							
St. Louis	237	13.7	32.88	11.4	21.5	51.60	18.72
East St. Louis	234	13.7	31.20	13.3	21.5	51.60	20.40
Quincy	152	11	26.20	16.5	17.2	41.28	16.08
Hamilton	133	11	25.20	18.9	15.3	36.72	11.52
Keokuk	130	11	26.40	20.3	15.3	36.72	10.32
Burlington	87	11	26.40	30.3	13.1	31.44	5.04

[1] Eastbound. [2] Westbound.

It will be noted that the rate on agricultural implements from St. Louis to Chicago is 16.3 cents, and for about the same distance from St. Louis to Kansas City, 22½ cents.

In the *1915 Western Rate Advance Case—Part II*, 37 I. C. C., 114, at page 128, it was said:

The carriers are attempting to place agricultural implements, as far as possible, on the class basis, and as machinery, which is fairly representative of the entire class A list and moves in greater quantities than the agricultural implement mixture, takes class A rates, no reason appears why the implement mixture should not be placed on the same basis.

The present rates on agricultural implements between St. Louis and Keokuk and Illinois points are below the class basis under the Illinois classification.

GLASS BOTTLES.

The rates on glass bottles and fruit jars between St. Louis and Keokuk and points in Illinois are 105 per cent of the rates on the same commodities within Illinois, where they are carried on commodity rates lower than the Illinois distance scale, and adjusted with respect to rates from producing points elsewhere. Since no bottles are made in St. Louis and Keokuk, the movement is largely into these cities.

Below are shown carload rates on glass bottles from Illinois producing points to St. Louis and Keokuk as compared with rates from Indiana producing points for equal distances:

Comparative statement of rates on glass bottles, carload, from Illinois producing points to St. Louis, Mo., and Keokuk, versus rates from Indiana producing points to points equidistant.

	Rate.	Miles.	From—	To—	Rate.	Miles.
To St. Louis, Mo., from—						
			Terre Haute, Ind	Conlogue, Ill	8.9	24
Alton, Ill	5.2	24	Indianapolis, Ind	Reno, Ind	8.4	28
			Terre Haute, Ind	Reelsville, Ind	9.5	24
			Indianapolis, Ind	Kokomo, Ind	7.9	54
Hillsboro, Ill	6.2	58	Evansville, Ind	Smith, Ind	10	57
			Muncie, Ind	Frankfort, Ind	8.4	61
			Indianapolis, Ind	Shelby, Ohio	12.7	216
Streator, Ill	11.6	216	Evansville, Ind	Wadena, Ind	13.7	219
			Muncie, Ind	Westview, Ohio	14.2	214
			Indianapolis, Ind	Berea, Ohio	15.2	271
Chicago Heights, Ill	12.6	269	Indianapolis, Ind	Sandusky, Ohio	13.7	270
			Winchester, Ind	Springfield, Ill	15.3	273
To Keokuk, Iowa, from—						
			Gas City, Ind	Chicago, Ill	11.6	163
Alton, Ill	10.5	157	Muncie, Ind	Kansas, Ill	13.7	158
			Indianapolis, Ind	Altamont, Ill	12.6	151
			Evansville, Ind	Morocco, Ind	13.7	240
Hillsboro, Ill	13.1	241	Muncie, Ind	Akron, Ohio	14.2	234
			Terre Haute, Ind	Marsh, Ohio	14.7	234
			Muncie, Ind	Wellington, Ohio	13.7	198
Streator, Ill	10.5	196	Evansville, Ind	Winthrop, Ind	12.1	196
			Indianapolis, Ind	Martel, Ohio	13.7	196
			Indianapolis, Ind	St. Louis, Mo	14.2	[illegible]
Chicago Heights, Ill	13.1	257	Terre Haute, Ind	Keokuk, Iowa	15	260
			Muncie, Ind	Centralia, Ill	14.7	[illegible]

BRICK, CLAY, AND TILE.

Rate groups on all building and paving brick are large. The St. Louis group extends west as far as Vandalia, Mo., and east as far as Altamont, Ill. St. Louis and East St. Louis both took the same group rates from Illinois points from 1902 until 5 per cent was added to the St. Louis rates, with no change in the East St. Louis rates.

Canton, Ohio, produces a large amount of this commodity and is typical of Ohio producing points. For substantially equal distances to points in Ohio, Pennsylvania, and Wisconsin, the rates from St. Louis are less than the Canton rates for the shorter hauls and for the longer hauls about the same.

From—	To—	Miles.	Rate per ton.
St. Louis	Plainview, Ill	50	$0.84
Canton, Ohio	Lakeville, Ohio	50	.84
St. Louis	Springfield, Ill	99	.95
Canton, Ohio	Pittsburgh, Pa	101	1.05
St. Louis	Peoria, Ill	162	1.16
Canton, Ohio	Lima, Ohio	160	1.21
St Louis	Cayuga, Ill	197	1.36
Canton, Ohio	Dixon, Ohio	200	1.36
Galesburg, Ill	St. Louis	105	1.05
Do	Chicago, Ill	103	1.00

STONE, SAND, AND GRAVEL.

The St. Louis rates are 105 per cent of the East St. Louis rates from and to Illinois points. There is a considerable movement of stone to St. Louis, generally from near-by points such as Stolle and Falling Springs, Ill., and of flint grinding pebbles from Chicago to St. Louis. Upon the 13 roads for the year 1914 within Illinois the average haul on stone and gravel, as given by the defendants, was 48.2 miles; the average loading, 44.7 tons; the average rating, 33.8 cents per ton; the average revenue per ton-mile, 7.2 mills, and per car-mile, 31.4 cents. The rate within Illinois upon sand and gravel under the schedule of the State Public Utilities Commission of Illinois for 48.2 miles is 76 cents a ton.

LUMBER.

The commodity rate on lumber from St. Louis and East St. Louis to Chicago was for a long time 2 cents less than the rate to the same destinations from the Ohio River, taking Cairo as an example. The rate from both St. Louis and East St. Louis was formerly 8 cents, and from Cairo 10 cents. The 5 per cent increase made the St. Louis rate 8½ cents, while the East St. Louis rate remains at 8 cents.[1]

[1] Interstate tariffs show rate from East St. Louis to Chicago 8½ cents, same as from St. Louis.

Below is a table of commodity rates on lumber from St. Louis and East St. Louis to certain Illinois points and the ton-mile and car-mile revenue based on a loading of 34,000 pounds, illustrating the rate relationship of these two cities:

To—	From St. Louis.				From East St. Louis.[1]			
	Miles.	Rate.	Ton-mile.	Car-mile.	Miles.	Rate.	Ton-mile.	Car-mile.
		Cents.	*Mills.*	*Cents.*		*Cents.*	*Mills.*	*Cents.*
Springfield	99	7.5	15.1	25.8	96	7	14.6	24.8
Peoria	162	7.5	9.3	15.7	159	7	8.8	15
Galesburg	208	8.5	8.2	13.8	205	8	7.8	13.3
Rock Island	262	8.5	6.5	11	259	8	6.2	10.5
Rockford	332	8.5	5.1	8.7	329	8	4.9	8.2

[1] Interstate tariff shows rates from East St. Louis same as from St. Louis.

The ton-mile earnings under these rates from St. Louis, higher as they are than the ton-mile earnings from East St. Louis, is a reversal of the normal relationship, whereby ton-mile earnings ought to decrease with the increase in distance.

Following is a table in which are compared lumber rates and earnings from St. Louis to Illinois points with certain other interstate rates and earnings for similar distances; 34,000 pounds is used as the loading:

	Miles.	Rate.	Ton-mile.	Car-mile.
St. Louis to—		*Cents.*	*Mills.*	*Cents.*
Peoria, Ill	162	7.5	9.3	15.7
Terre Haute, Ind	169	7.5	8.8	14.9
Cape Girardeau, Mo	131	9.5	14.5	24.6
Galesburg, Ill	208	8.5	8.2	13.8
Farmington, Iowa	208	[1] 8.5	8.2	13.8
Chicago, Ill	284	8.5	6	10.2
Kansas City, Mo	279	12.5	8.9	14
Cairo to—				
Indianapolis, Ind	255	10.5	8.2	17.8
Terre Haute, Ind	196	9.5	9.7	16.6
Evansville, Ind., to—				
Chicago, Ill	286	10.5	7.3	12.5
Danville, Ill	163	7.4	9.2	15.5
Cincinnati to—				
Fort Wayne, Ind	166	9.5	11.4	19.5
Detroit, Mich	279	10.5	7.5	12.8
Sturgis, Mich	223	10.5	9.4	16

[1] Applies southbound only.

Below is a table of rates and their earnings from St. Louis to Illinois points compared with the rates from Chicago to Illinois points where the distances are similar:

	Miles.	Rate.	Ton-mile.	Car-mile.
		Cents.	*Mills.*	*Cents.*
St. Louis to Peoria, Ill	162	7.5	9.3	15.7
Chicago to Peoria, Ill	155	[1] 7	9	15.4
St. Louis to Danville, Ill	187	7.5	8	13.6
Chicago to Springfield, Ill	185	[2] 8.5	9.2	15.6

[1] Interstate rate, 7.4. [2] Interstate rate, 8.8.

In *Lumbermen's Exchange of St. Louis* v. *A. & S. R. R. R. Co.*, 24 I. C. C., 220, at page 221, it was remarked:

> The original adjustment of tariffs by which rates to St. Louis and East St. Louis differed according to the point of origin gradually disappeared. East St. Louis became an important commercial and industrial center, the two cities were in effect the same, and carriers in recognition of this fact gradually established the same rates to these two localities. By 1910 it had come to pass that rates upon nearly all commodities in nearly all directions, except certain territory, were the same to St. Louis and East St. Louis.

This case approved a common rate of 19 cents on lumber from the southwest to St. Louis and East St. Louis, effected by an increase of 1 cent in the rate to St. Louis and a reduction of one-half cent in the rate to East St. Louis, and sanctioned the putting of these two cities on the same basis as to this commodity.

In *Lumber to Wisconsin Points*, 37 I. C. C., 198, proposed rates on lumber from points in Missouri and Arkansas to Milwaukee, Wis., and points immediately south, were found justified. For example, the rate from Leeper, Mo., to Milwaukee approved was 21.2 cents. For the distance of 501 miles this yielded ton-mile earnings of 8.5 cents and, based on 45,000-pound loading, car-mile earning of 19 cents.

In *Lumber between Points in Western Trunk Line Territory*, 38 I. C. C., 370, a proposed rate of 12 cents from St. Paul, Minneapolis, Duluth, Minnesota Transfer, and Stillwater, Minn., to Chicago and Chicago rate points was justified. For the distance of 408 miles from Minneapolis to Chicago this yielded 5.8 mills per ton-mile, and, using a loading of 48,000 pounds, 13.9 cents per car-mile.

It will be observed that the comparisons cited involve distances materially greater than those here involved, and in consequence the earnings per mile normally should be lower.

POWDER AND HIGH EXPLOSIVES.

There seems to be no movement of these commodities from St. Louis to Illinois except of shipments going beyond. The principal producing points in Illinois are Fayville, East Alton, Phoenixville, Edwardsville, and Pollard. From Fayville to St. Louis the rate on powder is 24.2 cents; on high explosives, 31.5 cents; from East Alton, Ill., to St. Louis the powder rate is 14.2 cents, but only a class rate on high explosives. The defendants' witness testified that the carriers were earning less money on shipments of these commodities within Illinois than within Indiana, Ohio, Pennsylvania, and on their interstate movement generally.

CEMENT.

Since we are now engaged in a general investigation as to cement rates, which includes the St. Louis-Illinois rates, the commodity rates upon this commodity will not be passed upon in this proceeding.

MISCELLANEOUS COMMODITIES.

Evidence was introduced as to the rates between St. Louis and Illinois points on a large number of commodities other than those already dealt with, and moved almost entirely upon the basis of commodity rates within Illinois freight committee territory. That already adduced is illustrative of the situation as to these miscellaneous commodities. The commodity rates are all of them less than the class rates which would otherwise apply and in most instances are materially less.

The defendants showed revenue results and other data of the movement of 153,956 cars of all carload shipments of miscellaneous commodities at commodity rates,[1] exclusive of the commodities hitherto

[1] This list of miscellaneous commodities moving in carloads includes:

Acid, sulphuric in tank cars.
Acid, phosphate in bulk.
Alumina, sulphate of.
Ammonia, sulphate of.
Ashes, brass.
Ashes, lead.
Ashes, zinc.
Bags and bagging.
Baking powder.
Barytes.
Bedsteads (iron and brass).
Beer.
Beer, tonic.
Binder board.
Blue vitriol.
Bottoms, spelter dross.
Bottoms, zinc.
Bottoms, zinc dross.
Bridge builders' outfit.
Bone black.
Bottles, glass.
Bottle carriers.
Bottle caps.
Box board.
Boxes, fiber, k. d.
Brimstone.
Carpet, cork.
Charcoal, animal.
Cable.
Cans.
Canned goods.
Canned stock.
Cars, street.
Cars (chair, parlor, dining, sleeping, coach, baggage, express, mail, box, refrigerator, caboose, coal, flat).
Castings, school furniture.
Clay.
Crude chocolate.
Crude glycerine.
Core.
Cordage.
Coal tar.
Cotton.
Cotton linters.
Cotton ashes.
Cottonseed cake.
Cottonseed hulls.
Cottonseed meal.
Cullet.
Demijohns.
Dross, lead.
Dross, spelter.
Dross, zinc.
Dry plates.
Endless chain grate fuel stokers.
Engines.
Furniture, school.
Glass, plate.
Glass, skylight.
Glauber's salts.
Glucose.
Handles, wooden.
Hair, plastering.
Hop tonic.
Hop tea.
Jellies.
Kegs.
Lead.
Lead, paste.
Lead, scrap.
Lead, wool.
Lime, phosphate of.
Leather.
Leather heels and soles.
Linoleum.
Lime sulphur solution.
Machinery.
Malt.
Metal couch frames.
Mucilage.
Nitre cake.
Nuts, peanuts or pecans.
Oilcloth, floor.
Oil, coconut.
Oil, creosote.
Oil, cottonseed.
Oil, linseed.
Pails.
Paint, dry earth.
Paints.
Paper and paper articles.
Paper stock.
Paper (wall).
Peas and beans, dried.
Pickles.
Putty.
Refuse fertilizing hail.
Rope, wire.
Rosin.
Salts, Epsom.
Scrap waste leather.
Shells, ground.
Soap.
Soap powder.
Soap stock, cottonseed.
Soap, lye.
Soda, bicarbonate of.
Soda, ash.
Soda, coustre.
Soda, sal.
Soda, sulphate of.
Soda, silicate of.
Spelter.
Spring beds.
Starch.
Sublimed lead.
Sugar.
Table sauces.
Tan bark.
Tanners' offal.
Tile roofing.
Tin articles.
Tin foil.
Tin plate.
Tobacco.
Tobacco stems.
Tripate.
Trout.
Vinegar.
Washing compounds.
Washing machines.
Water, mineral.
Window shades.
Window-shade cloth.
White lead.
Whiting.
Wood-pulp board.
Zinc flue dust.
Zinc, sulphate of.
Zinc, oxide.

dealt with and some few others, such as coal, between Illinois points for the year ended June 20, 1914, on the 13 railroads. The average car loading of these was 21.7 tons; the average haul per ton and per car, 86 miles; the average revenue per 100 pounds on the weight of the freight, 3.8 cents. If the revenue were increased 5 per cent, it would represent approximately the results upon the same traffic between St. Louis and Illinois points. Another of the defendants' exhibits compares the average rate per 100 pounds for the average ton haul of these miscellaneous commodities with the average of carload class rates of classes 5, 6, 7, 8, 9, and 10 of the State Public Utilities Commission of Illinois present distance scale for like distances and with rates for similar distances in other localities. Thus, the simple average of these sixth-class rates for the average haul of 86 miles is shown as 9.07 cents per 100 pounds. The simple average rate of 3.8 cents per 100 pounds on all the cars included in the calculation is equal to about 42 per cent of the average carload class rate of 9.07 cents for 86 miles. Still another exhibit of the defendants is offered to show that the commodity rates between the St. Louis and East St. Louis group and the Chicago group are generally lower than the commodity rates throughout central freight association and western classification territories. For example:

	Miles.	Commodity rate.		Miles.	Commodity rate.
Sulphuric acid:			Glucose:		*Cents.*
Chicago and—		*Cents.*	Chicago and—		
St. Louis	290	7.4	St. Louis		10.5
East St. Louis	287	7	East St. Louis [1]		10
[illegible]	285.3	14.2	Malt:		
[illegible]	306.4	15.1	Chicago and—		
...to		14.2	St. Louis		7.9
[illegible]	283.4	12.3	East St. Louis [1]		7.5
			Soap:		
			Chicago and—		
[illegible]		15.5	St. Louis		15.5
[illegible] [1]		14	East St. Louis [1]		15
[illegible]		15.5			
[illegible]		15			

[1] ...ppear in tariff filed with the Commission to and from East St. Louis same as to and

...cific complaint that Chicago and other Illinois points ... with St. Louis have their commodities carried to ...nts in Illinois at rates so much less than those applicable from St. Louis to the same consuming points, especially when the distances are similar, as to amount to undue preference. Likewise for equal distances out of Chicago and Keokuk into Illinois. Many industries in St. Louis are in competition with those in

Chicago for Illinois trade. Because of the increase in interstate rates from St. Louis, with no corresponding increase from Chicago, the complainants contend that their Chicago competitors are forcing St. Louis industries from trade in Illinois towns which were formerly their field, on the score of distance, and are compelling St. Louis merchants to absorb the increased freight charges, with consequent reduction of profits.

One of the complainant's witnesses testified that his grocery firm at St. Louis was in competition for the trade to Illinois points with grocery houses at East St. Louis, Alton, Litchfield, Pana, Benton, Centralia, Jacksonville, Springfield, and Chicago. When the St. Louis rates were increased, this firm was compelled to "equalize the freight" with its competitors to absorb the increase.

Another of the complainant's witnesses whose company at St. Louis manufactures steel castings, testified that its chief competitors were at East St. Louis, Granite City, and Chicago; that it, too, was compelled to absorb the increase in the St. Louis rate to points in Illinois when it met this Illinois competition.

The defendants maintain that St. Louis and East St. Louis were properly grouped together so as generally to accord them the same group rates on long-haul traffic in all directions; that the grouping has been equitable and for the most part has given satisfaction; that when St. Louis was placed upon the same basis as East St. Louis on traffic to and from the east the circle was simply completed, because these cities had been on one rate basis as to traffic to certain Ohio River crossings, such as Louisville, the southeast, the southwest, the west, the northwest, and a large part of the north; and that in determining the group basis the railroads dealt with St. Louis and East St. Louis in a manner similar to that which they had treated points outside of Chicago in the switching zone.

The Chicago switching district is between 35 and 45 miles from north to south and 8 or 10 miles wide. It includes from 3,200 to 3,500 industries. Its boundary begins just east of Deering, Ind., proceeds generally south, then west just north of Chicago Heights, and then northwestwardly in a zigzag way to Waukegan, Ill. The Chicago rate is carried for nearly the entire district, provided a certain minimum revenue is received for the transportation. That is, to obtain the flat Chicago rate a minimum rate of 2 to 2½ cents per 100 pounds must be paid upon a minimum weight of 60,000 pounds, and further, the revenue from the car must equal or exceed $15. Out of the rate when this minimum of revenue is returned the terminal or switching line receives, as a rule, 1 cent

per 100 pounds, with a minimum of $6 per car. The situation at St. Louis, as has been indicated, previous to October 26, 1914, the date of the 5 per cent advance, was similar in effect to that in Chicago, though the result was arrived at by a different method. St. Louis and East St. Louis were treated as one switching district, which extends from east to west 14 to 16 miles and from north to south 15 to 20 miles. In this were included about 1,700 industries. As at Chicago, a common rate was applied to this district, provided a minimum in earnings was secured. That this minimum was determined in the St. Louis district by inquiring whether in a particular instance the traffic moved at least 100 miles is immaterial.

The carriers deemed that between what might be termed the St. Louis-East St. Louis group and Illinois points, reasonable rates were 5 per cent in advance of those existing before October 26, 1914. We found the increased rates to have been justified as to that part of this group which lay in Missouri, but the Illinois commission, as already related, suspended the proposed rates as applying to the portion of the district lying in Illinois, and has not yet decided the issue. The question of discrimination as between St. Louis and the east side arises regardless of the expense of crossing the Mississippi River, and only because of an increase in the St. Louis rates wherein the expense of the river crossing was already considered with no corresponding increase in the rates of the Illinois side of that industrial community.

The defendants point out that the expense of bridging the river at St. Louis is more than counterbalanced at Chicago by the cost of track elevation. From 1891 to 1914 the steam railroads in Chicago had, according to a witness for the defendants, spent $73,320,-293.11 in separating the grades of their tracks and of the streets. This included 985 subways under the streets. To finish the work now under ordinance will require about $16,000,000 more. The Illinois Central had spent upon track elevation in Chicago up to the end of 1914 on its main line from Chicago toward Cairo $3,561,000, and on its line between Chicago and East Dubuque $309,000. There is now under construction for the Illinois Central work of track elevation which will cost to complete $2,325,000.

The following table gives a statement introduced by the defendants showing the expense to all roads in Chicago in elevating their tracks:

Track elevation completed or under construction at end of year 1914.

Railroad.	Total number of grade crossings eliminated and subways constructed.	Amount spent to end of calendar year 1914.	Estimated amount to complete work under ordinance at that date.	Total amount.
A., T. & S. F. Ry.	29	$4,604.30	.....	$656,604.30
B. & O. Ry.	10	91,062.02	.....	1,091,062.02
B. & O. C. T. Ry.	50	90,000.00	$1,225,000.00	5,125,000.00
C., B. & Q. Ry.	45	93,148.70	.....	4,443,148.70
C. J. Ry.	57	35,000.00	120,000.00	1,455,000.00
C., M. & St. P. Ry.	47	06,653.74	844,346.26	4,550,000.00
C., R. I. & P. Ry.	50	23,900.69	499,887.84	3,723,788.53
C. & A. R. R.	35	75,227.00	115,000.00	1,390,227.00
C. & I. W. R. R.	4	00,000.00	.....	2,000,000.00
C. & N. W. Ry.	226	47,300.00	2,000,000.00	16,447,300.00
C. & W. I. R. R. & Belt Ry. of Chicago.	96	44,733.00	5,000,000.00	19,844,733.00
G. T. W. Ry.	26	52,665.00	.....	452,665.00
I. C. R. R.	34	62,311.34	3,225,000.00	5,[illegible],311.34
C., M. & N. / St. C. A. L.	29	309,000.00	.....	309,000.00
I. H. B. R. R.	22	597,000.00	.....	597,000.00
Illinois Northern Ry.	1	300,000.00	.....	300,000.00
L. S. & M. S. Ry.	70	7,298,316.17	465,000.00	7,763,316.17
N. Y. C. & St. L. Ry.	5	1,144,562.00	387,000.00	1,531,562.00
P., C., C. & St. L. Ry.	62	3,094,666.00	.....	3,094,666.00
P., Ft. W. & C. Ry.	78	6,040,128.00	.....	6,040,128.00
Wabash R. R.	11	214,000.00	150,000.00	364,000.00
Central Terminal R. R.	5	1,[illegible],000.00	25,000.00	1,[illegible],000.00
Total	985	73,820,298.11	16,150,234.10	[illegible],970,537.21

The total amount of $73,820,298.11 represents the cost of elevating the tracks, building subways, filling and paving streets, and collateral costs of elevation. The cost of the tracks is not included, nor of the depots. Both freight and passengers move over these elevated tracks into Chicago. The witness who gave the data was for several years the engineer of bridges of the Illinois Central. He estimated the approximate cost of reproducing the two railroad bridges over the Mississippi River at St. Louis at from $3,000,000 to $3,500,000 each.

Beyond the two great terminals the traffic conditions between St. Louis-East St. Louis and Illinois stations are substantially the same as between Illinois points such as Chicago and the same Illinois stations; also between Illinois points generally. From the elaborate statistics introduced by the defendants we may perhaps safely assume that the terminal expense per car at Chicago is greater than the average for the state of Illinois.

While the complainant technically attacked the present commodity rates between St. Louis and Illinois points as unreasonable, it substantially conceded that the quantity of the rates was not excessive and the main contention is that these rates are unduly preferential. The carriers admit a discrimination which is unlawful against St. Louis. The interveners, however, assert, in the first place, that the present advances in rates as between the two cities works no

unlawful discrimination against St. Louis because as to this locality a haul across a bridge is involved which increases the service rendered by the carriers, and, in the second place, that if discrimination be found it should not be remedied by increasing the Illinois state rates, which, they insist, are reasonable.

Previous to the altered relationship between St. Louis and East St. Louis effected by the 5 per cent increase in the rates of St. Louis, these two cities on the opposite sides of the Mississippi River were as to hauls into Illinois 100 miles or more treated as one community. Commercial conditions had become adjusted to this rate situation and little dissatisfaction had shown itself either on the part of carrier or shipper. The increasing of the rates as to St. Louis with no attendant increase as to East St. Louis disrupted this satisfactory rate adjustment, and as a whole has brought to pass undue prejudice to St. Louis. If the rate parity eastbound should be disrupted, consistency would seemingly permit a similar disruption westbound, and thus require East St. Louis to destinations west of the irregular ring boundary to the west of St. Louis to pay rates higher than the St. Louis rates.

This record, as a whole, points to the conclusion that the interstate commodity rates to the west of the region here involved are higher than in Illinois; that the commodity rates between points without the state, such as St. Louis and Keokuk, and points within Illinois are generally upon a higher basis than the commodity rates within Illinois; and that the commodity rates in the western part of official classification territory are generally, and apart from state commodity rates within Illinois, on a level higher than the commodity state rates.

That there is a barrier against interstate commerce into and out of Illinois at the state line, particularly in respect to traffic between St. Louis and Illinois points, is apparent from rate comparisons in evidence. Traffic within Illinois is accorded commodity rates generally lower than when the movement is interstate. In so far as this works unlawful discrimination against interstate commerce, and in so far as the rates for traffic within the state constitute a burden upon interstate commerce, it is a violation of the act.

The interveners sought to differentiate the case at bar from *The Shreveport Case*, 23 I. C. C., 31, pointing out that the carriers had effected the discrimination by their own act in increasing the St. Louis rates by 5 per cent. The increase in freight rates, however, was brought about following a finding of this Commission which justified, in general, a 5 per cent increase in a territory of which the greater portion of Illinois was a part. At the supplemental hearing neither the complainants nor interveners offered any evidence

against the existing commodity rates, between St. Louis and Illinois points or between Keokuk and Illinois points, to demonstrate that they were intrinsically unreasonable.

Upon the reasonableness of commodity rates on bituminous coal, coke, stone, sand or gravel, powder and high explosives, pig iron and blooms, and cement, we will not pass in this proceeding and these are not included in our general finding. These commodities were either expressly excepted—cement because of the cement investigation—or as to them the evidence was insufficient.

FINDINGS.

We are of opinion and find, for the purpose of ending the discrimination found herein—

(1) That the present commodity rates, with the exceptions above noted, between St. Louis and Illinois points and between Keokuk, Iowa, and Illinois points, in so far as they are no greater than the class rates which would apply to the same traffic were no commodity rates in effect, are no greater than just and reasonable maximum rates.

(2) That the commodity rates between St. Louis and Illinois points are unduly and unreasonably prejudicial against St. Louis and unduly preferential to East St. Louis to the extent that they exceed the commodity rates by the same routes between East St. Louis and the same Illinois points where these Illinois points are 100 miles or more from St. Louis; and where the Illinois points are less than 100 miles from St. Louis are unduly and unreasonably prejudicial as against St. Louis and unduly preferential as to East St. Louis to the extent that they exceed the commodity rates by the same routes between East St. Louis and these same Illinois points by more than the differences which existed prior to October 26, 1914.

(3) That the present commodity rates between Keokuk, Iowa, and Illinois points are unduly and unreasonably prejudicial as against Keokuk and unduly preferential as to points in Illinois directly opposite to Keokuk to the extent that they exceed the commodity rates by the same route between such points in Illinois directly opposite to Keokuk and the same Illinois points where the points are 100 miles or more from Keokuk; and where the Illinois points are less than 100 miles from Keokuk, are unduly and unreasonably prejudicial as against Keokuk and unduly preferential as to points in Illinois directly opposite to Keokuk to the extent that they exceed the commodity rates by the same routes between such points in Illinois directly opposite Keokuk and these same Illinois points by more than the differences which existed prior to October 26, 1914.

(4) That the commodity rates between St. Louis and Illinois points are unduly and unreasonably prejudicial as against St. Louis and unduly preferential as to Chicago to the extent that the commodity rates between St. Louis and Illinois points are on a basis, distance considered, higher than the commodity rates between Chicago and those same Illinois points.

(5) That the commodity rates between Keokuk and points in Illinois are unduly and unreasonably prejudicial as against Keokuk and unduly preferential as to Chicago to the extent that the commodity rates between Keokuk and Illinois points are on a basis, distance considered, higher than the commodity rates between Chicago and those same Illinois points.

(6) That the maintenance by the defendants of commodity rates between points in Illinois which in combination with other commodity rates required or permitted by this report will produce the undue and unreasonable prejudice against interstate commerce and the undue preference in favor of intrastate commerce within Illinois condemned in this report of the Commission, is unlawful.

(7) That the commodity rates of these defendants between points within Illinois 100 miles or more apart where they are on a basis lower than the basis of the commodity rates between St. Louis and Illinois points for corresponding distances are a burden upon interstate commerce and unduly preferential to intrastate commerce.

No. 9068.

WICHITA WHOLESALE FURNITURE COMPANY

v.

ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY ET AL.

Submitted February 5, 1917. Decided April 19, 1917.

Rates on furniture in carloads from and through Wichita, Kans., to points in Oklahoma and Texas not shown to be unreasonable or unjustly discriminatory. Complaint dismissed.

George H. Fleischman for Wichita Traffic Bureau.

W. J. Wagner for Wichita Wholesale Furniture Company.

Thomas Bond for St. Louis-San Francisco Railway Company.

C. L. Fontaine for Wichita Falls & Northwestern Railway Company.

E. H. Shaufler for Kansas City, Mexico & Orient Railway Company of Texas.

J. C. La Coste for Chicago, Rock Island & Pacific Railway Company and receiver; Chicago, Rock Island & Gulf Railway Company and receiver; and El Paso & Southwestern system.

Report of the Commission.

Clements, *Commissioner:*

The Wichita Wholesale Furniture Company, located at Wichita, Kans., complains that carload rates on furniture maintained by defendants from and through Wichita to points in the states of Oklahoma, Texas, and New Mexico are unreasonable, unjustly discriminatory, and unduly prejudicial to it in favor of dealers in furniture located at Kansas City and St. Louis, Mo., Peoria and Chicago, Ill., and other points taking the same rates, in violation of sections 1, 2, and 3 of the act. At the hearing complaint against rates to points in New Mexico was withdrawn.

Complainant buys various kinds of furniture in carload lots at points on the Mississippi River, Chicago, and points east thereof, ships it to Wichita, there makes up carload mixtures, and forwards the same to various interstate destinations, including points in Oklahoma and Texas.

In making shipments to these latter points complainant encounters keen competition, primarily from Kansas City. Competition with

Oklahoma City and Chickasha, Okla., Fort Smith, Ark., St. Louis, and Chicago is also encountered. Through carload charges to southern, southwestern, and western Oklahoma are from 7 to 30 cents per 100 pounds higher when the traffic moves to and from Wichita than when it moves through Kansas City. The higher charges to and from Wichita, it is alleged by complainant, cause a shrinkage in its profits of from $14 to $30 per car, amounting to from 2 to 3 per cent of the value of the furniture transported, which it is required to absorb out of its normal profit.

It is asserted by complainant that furniture is generally carried to points in Oklahoma from Wichita at fourth-class rates; that rates from Kansas City and other Missouri River points are lower than fourth class to the same destinations; that rates to Texas points from Wichita are on the third-class basis; that to the same points from Kansas City they are less than third class; and that commodity rates from Wichita are too high, because they bear a higher percentage relationship to the class rates than obtains with respect to rates from Kansas City and other points.

Complainant desires to have rates on furniture moving via Wichita equalized with those obtaining via Kansas City, from which point competition is strongest.

Rates are hereinafter stated in cents per 100 pounds.

The following table, compiled from an exhibit filed by complainant, shows the average distances and the rates on furniture, carloads, from the Mississippi River crossings to Kansas City and Wichita; the distances and rates to various representative points in Oklahoma and Texas from Kansas City and Wichita; and the through distances and charges from points of origin to destinations via Kansas City and Wichita:

Destination.	Distributing points.	Distances and rates, Mississippi River to distributing points.		Distances and rates, distributing points to destination.		Through distances and charges.	
		Miles.	Cents.	Miles.	Cents.	Miles.	Cents.
Altus, Okla.	Kansas City	313	22.5	476	67	786	89.5
Do.	Wichita	532	57.5	250	45	792	102.5
Chickasha, Okla.	Kansas City	313	22.5	412	60	725	82.5
Do.	Wichita	532	57.5	191	39	723	96.5
Elk City, Okla.	Kansas City	313	22.5	472	67	785	89.5
Do.	Wichita	532	57.5	249	44	781	92.5
El Reno, Okla.	Kansas City	313	22.5	381	60	694	82.5
Do.	Wichita	532	57.5	159	35	691	92.5
Forgan, Okla.	Kansas City	313	22.5	396	67	709	89.5
Do.	Wichita	532	57.5	190	38	722	95.5
Gould, Okla.	Kansas City	313	22.5	552	67	866	89.5
Do.	Wichita	532	57.5	287	58	819	115.5
Hobart, Okla.	Kansas City	313	22.5	485	67	798	89.5
Do.	Wichita	532	57.5	263	46	795	103.5
Lawton, Okla.	Kansas City	313	22.5	467	67	780	89.5
Do.	Wichita	532	57.5	245	44	777	101.5
Mangum, Okla.	Kansas City	313	22.5	511	67	824	89.5
Do.	Wichita	532	57.5	589	49	821	106.5

Destination.	Distributing points.	Distances and rates, Mississippi River to distributing points.		Distances and rates, distributing points to destination.		Through distances and charges.	
		Miles.	Cents.	Miles.	Cents.	Miles.	Cents.
Shawnee, Okla........	Kansas City.......	313	22.5	511	60	824	82.5
Do................	Wichita............	532	57.5	589	39	821	96.5
Shattuck, Okla........	Kansas City.......	313	22.5	412	67	725	89.5
Do................	Wichita............	532	57.5	206	40	732	97.5
Woodward, Okla......	Kansas City.......	313	22.5	382	67	695	89.5
Do................	Wichita............	532	57.5	176	37	708	94.5
Amarillo, Tex.........	Kansas City.......	313	22.5	551	78	864	100 5
Do................	Wichita............	532	57.5	345	60	877	117 5
Chillicothe, Tex......	Kansas City.......	313	22.5	503	78	816	100.5
Do................	Wichita............	532	57.5	290	57	822	114.5
Dalhart, Tex..........	Kansas City.......	313	22.5	523	85	836	107.5
Do................	Wichita............	532	57.5	448	84	980	141.5
Shamrock, Tex.......	Kansas City.......	313	22.5	826	78	1.139	100.5
Do................	Wichita............	532	57.5	750	63	1,283	120.5
Sweetwater, Tex......	Kansas City.......	313	22.5	645	78	958	100.5
Do................	Wichita............	532	57.5	432	78	964	135.5

The complainant shows by the above and other comparisons, not necessary to reproduce here, its disadvantage on shipments jobbed to western and southwestern Oklahoma and to Texas points in comparison with Kansas City and other points.

In *Wichita Business Asso.* v. *A., T. & S. F. Ry. Co.*, 30 I. C. C., 374, we had under consideration through charges on agricultural implements, in carloads, based on the rates into and out of Wichita from points on the Mississippi River and east as compared with through charges based on Kansas City combination; and also the local rates from Wichita as compared with local rates from Kansas City to the same points. In that case, page 375, we said that—

> These commodity rates out of Wichita, of which complaint is made, must be so adjusted that the same relative difference is maintained as now exists between the class rates applicable from the two above-named cities.

Complainant refers to and relies upon the above statement to sustain its contention that the rates outbound from Wichita are unreasonable and unjustly discriminatory, because they bear a higher percentage relationship to the class-rate adjustment than do the rates from Kansas City.

Complainant submitted no substantial evidence to show that the through rates from points of manufacture to Oklahoma and Texas destinations or the rates out of Wichita are unreasonable *per se*, but rests its case almost wholly upon the alleged unjust discrimination in favor of Kansas City and other points, because the sum of freight charges on furniture in carloads from the manufacturing point to ultimate destinations in Oklahoma and Texas is greater when the shipments are handled through Wichita than when handled via Kansas City.

The defendants show that this situation is due to the fact that conditions affecting transportation to the Missouri River from points

in central freight association territory and on and east of the Mississippi River justify a lower basis of rates to Kansas City than to Wichita. They refer to the Commission's decision in *State of Kansas* v. *A., T. & S. F. Ry. Co.*, 27 I. C. C., 673, wherein we prescribed maximum class rates to numerous jobbing points in interior Kansas, including Wichita, from Mississippi River crossings, and suggested that defendants line up their commodity rates in proper relationship to the class rates therein prescribed. A readjustment of rates to conform with the findings in that case was subsequently made by defendants. The through commodity rate on furniture in carloads to Wichita from Mississippi River crossings was made 57.5 cents and is less than the full combination of rates to and from Kansas City. The through commodity rate on the same traffic from the same points to Kansas City is 22.5 cents.

The defendants also show that outbound rates from Wichita to destinations described in the complaint are, distance considered, as low as, or lower than, outbound rates to the same destinations from Kansas City. With respect to complainant's allegation that the outbound rates from Wichita bear a higher percentage relationship to the class rates than do the outbound rates from Kansas City, defendants assert that complainant in reaching that conclusion compares commodity rates from Kansas City with the standard or regular third-class rates from that point; and that it compares the commodity rates from Wichita with the "jobber's scale" of class rates outbound from that point, which scale is less than the standard or regular third-class scale in effect in that territory.

For many years there has been in effect to Oklahoma points from Wichita a lower line of rates on the first four classes named in western classification than obtains generally between points in Kansas and Oklahoma, which scale was established and has been maintained to enable jobbers at Wichita to do business in Oklahoma in competition with other jobbing points. In the establishment of the lower or jobber's scale of rates the furniture dealer was provided for by making applicable to furniture in carloads fourth-class rates in connection with that scale, thereby giving such dealer a commodity basis or line of rates from Wichita to all points in Oklahoma. The St. Louis & San Francisco, hereinafter called the Frisco, in cases where the fourth-class jobber's basis was not considered sufficiently low to enable Wichita furniture jobbers to meet competition, has established specific commodity rates on a lower basis than the fourth-class jobber's scale.

It is asserted by defendants that if comparison is made with the standard or regular third-class rates to destinations in Oklahoma and Texas from Wichita it will be found that the carload commodity

rates outbound from that point bear a smaller percentage relationship to the third-class rates than the commodity rates from Kansas City bear to the third-class rates from that point.

A traffic representative of the Frisco submitted an exhibit showing 123 local points on the line of that carrier in Oklahoma to which outbound carload rates on furniture from Wichita are the same as or lower than rates to the same points from Kansas City. To many of the points the distances are materially greater from Wichita than from Kansas City, and in such instances the rates from Wichita and Kansas City are the same. To many other points rates from Wichita are very much less than from Kansas City, although the differences in distance are negligible considering the length of the hauls.

The following table shows a comparison of commodity rates on furniture to various points in Oklahoma and Texas from Kansas City and Wichita with third-class rates to the same points, together with the percentage relationship that the commodity rates bear to the class rates:

To—	From Kansas City.			From Wichita.		
	Third class.	Commodity.	Percentage.	Third class.	Commodity.	Percentage.
	Cents.	*Cents.*		*Cents.*	*Cents.*	
Ponca City, Okla.	59	59	100	36	22	66.1
Perry, Okla.	68	60	88.3	44	27	61.4
Guthrie, Okla.	74	60	81.1	52	32	61.5
Oklahoma City, Okla.	74	60	81.1	62	36	58.1
Purcell, Okla.	74	60	81.1	69	40	57.9
Ardmore, Okla.	96	67	69.8	83	47	56.9
Chickasha, Okla.	74	60	81.1	66	39	59.1
Cushing, Okla.	74	60	81.1	53	33	62.3
Shawnee, Okla.	74	60	81.1	66	39	59.1
Pawnee, Okla.	68	60	88.3	49	30	61.2
Blackwell, Okla.	59	59	100	34	20	60.4
Alva, Okla.	66	65	100	48	29	60.4
Woodward, Okla.	89	67	75.3	63	37	59
Shattuck, Okla.	89	67	75.3	69	40	57.9
Tulsa, Okla.	62	45.5	66.9	60	35	58.3
Enid, Okla.	68	60	88.3	40	26	62.5
Higgins, Tex.	96	78	81.2	73	58	79.5
Canadian, Tex.	96	78	81.2	77	60	77.9
Amarillo, Tex.	96	78	81.2	92	60	65.2
Canyon, Tex.	107	84	78.5	95	61	64.2
Hereford, Tex.	107	84	78.5	98	63	64.3
Bovina, Tex.	107	84	78.5	101	67	66.3
Plainview, Tex.	116	91	78.4	100	66	66
Lubbock, Tex.	119	93	78.1	105	71	67.6
Sweetwater, Tex.	96	78	81.2	96	78	81.2

The question of rates to and from jobbing points has been and is continually being pressed upon our attention by complaining shippers. The desire of jobbers located at various points is to have rates into and out of their particular points equalized, so that through rates to consuming territories shall be the same, no matter through which point the traffic moves. It is well settled that undue prejudice and disadvantage against a distributing point can not be predicated merely upon the fact that the combination of inbound and out-

bound rates exceeds the combination available via a competitive distributing point. *Rates on Knitting Factory Products*, 25 I. C. C., 634, 639.

The desire of this complainant, as before stated, is to secure an equalization of rates to points in Oklahoma and Texas with Kansas City. It is shown by this record that the Wichita furniture dealer has relatively a more favorable adjustment of outbound rates, distance considered, than has the Kansas City dealer. It is not practicable to have rates into and out of all jobbing points so constructed that the resulting through charges from the factory to ultimate destination are the same via all jobbing centers. Advantages of location, competitive conditions, the volume and flow of traffic, and numerous other considerations come into play, and must be given due weight in determining the adjustment of rates into and out of different jobbing points.

Upon all the facts and circumstances of record we are of opinion and find that the rates complained of have not been shown to be either unreasonable or unjustly discriminatory.

The complaint will therefore be dismissed.

No. 6081.

BOARD OF TRADE OF THE CITY OF CHICAGO

v.

PERE MARQUETTE RAILROAD COMPANY ET AL.

Submitted October 7, 1916. Decided April 9, 1917.

Rates, domestic and export, on grain and grain products from Chicago, Ill., to points in trunk line territory east of Niagara frontier not found unreasonable or unduly prejudicial in comparison with rates lower by 1 cent per 100 pounds contemporaneously in effect by break-bulk routes from Milwaukee, Manitowoc, and Kewaunee, Wis. Complaint dismissed.

Jeffery & Campbell and *J. S. Brown* for complainant.

Parker, Shields & Brown and *Geo. C. Conn* for Pere Marquette Railroad Company.

Miller, Mack & Fairchild and *George A. Schroeder* for Chamber of Commerce of Milwaukee.

F. C. Reynolds for Pere Marquette Line Steamers.

T. H. Burgess for all lines defendants except the Pere Marquette Railroad Company and the Grand Trunk system.

G. W. Kretzinger for Grand Trunk Railway Company of Canada and Grand Trunk Western Railway Company.

Ernest S. Ballard for New York Central Railroad Company and Michigan Central Railroad Company.

E. R. Newman for Wabash Railway Company.

T. A. McGrath for Minneapolis Traffic Association.

REPORT OF THE COMMISSION.

CLEMENTS, *Commissioner:*

Rates on grain and grain products, domestic and export, from a large territory west of the Mississippi River, north of Kansas City, Mo., and south of Minneapolis, Minn., to points in trunk line territory east of Niagara frontier are generally the same by all of the all-rail routes of movement. The rates from the territory described to Chicago and Milwaukee are generally the same, and from these markets to trunk line territory the reshipping, domestic, and export rates, applicable from Chicago all rail and from Milwaukee all rail through Chicago and also via car ferry across Lake Michigan and rail beyond, are the same. From Milwaukee there are break-bulk routes via which grain and grain products are loaded at Milwaukee from cars, wharves, or elevators into the holds of steamers and are un-

loaded into cars or handled through elevators at points across Lake Michigan. The break-bulk rates on grain and grain products to trunk line territory are uniformly 1 cent per 100 pounds lower than the all-rail rates. It is this difference in rates which is the subject of complaint, and the petition asks that it be eliminated and also that there be established from Chicago a break-bulk service at an equality of rates with Milwaukee. Manitowoc and Kewaunee, Wis., are also alleged to be unduly preferred in the same way as Milwaukee. There was no attempt to show that any of the rates are unreasonable *per se.*

Both the Pere Marquette and Grand Trunk railways operate break-bulk services from Milwaukee, the former through Ludington, Mich., in connection with the Pere Marquette Line Steamers, an independent corporation, and the latter through Grand Haven, Mich. The Grand Trunk break-bulk route does not handle grain in bulk and the Pere Marquette handles little or no traffic from Manitowoc or Kewaunee, Wis., via its break-bulk route. The Pere Marquette's break-bulk service and rates from Milwaukee will therefore be taken as representative of the situation complained of.

The Pere Marquette's break-bulk service from Milwaukee has been in existence since 1888, and until 1898 there was a differential in its favor of 2 cents. In 1898 the differential of the lake-and-rail routes under the all-rail routes was reduced from 3 to 2 cents, and the break-bulk rates from Milwaukee to trunk line territory were made 1 cent lower than the all-rail rates. In 1912 the Pere Marquette attempted to eliminate the differential, but the tariffs carrying the 1-cent increase in break-bulk rates were suspended and after hearing and investigation we found that the increased rates had not been justified. Upon a more complete and convincing showing, le at a rehearing, we reversed this finding and permitted the e Marquette to make the increases. *Break-Bulk Rates on Grain,* I. C. C., 78, and 30 I. C. C., 357. The Pere Marquette has never le the increase found justified and now defends the maintenance the 1-cent break-bulk differential.

The Chamber of Commerce of the city of Milwaukee and the Minneapolis Traffic Association intervened in support of the present adjustment. Several carriers not made parties also intervened.

The principal grains handled by the Pere Marquette's break-bulk route are oats and corn, the tonnage of the former being the heavier. The differential of 1 cent per 100 pounds is equivalent to approximately one-third of a cent per bushel on oats, and this, complainant contends, is sufficient to give Milwaukee a substantial and undue advantage over Chicago in the purchase in the west and sale in the east of that staple. Milwaukee and Chicago purchase grain in competi-

tion in a large territory, and there is testimony as to higher bids at times from the former than from the latter. There is also testimony that at times Milwaukee undersells Chicago in the east. Complainant contends that this results from the differential complained of.

During 1915 the total receipts of grain at Chicago were approximately 330,351,000 bushels, and at Milwaukee 70,148,510 bushels. During that year the outbound shipment of grain from Milwaukee amounted to 52,498,339 bushels, of which but 8,866,803, or 16.9 per cent, moved via the break-bulk routes. Of the outbound shipment of corn and oats from Milwaukee during that year, but 15.5 and 23.7 per cent, respectively, moved via the break-bulk routes. Below is a table showing for the years 1905 to 1915, inclusive, the number of bushels of grain shipped from Milwaukee by the break-bulk route and the percentages these shipments are of the combined shipments via all routes from Chicago and Milwaukee and also of the total Milwaukee shipments:

Year.	Milwaukee break-bulk shipments (bushels).	Per cent of Milwaukee and Chicago shipments.	Per cent of Milwaukee shipments.	Year.	Milwaukee break-bulk shipments (bushels).	Per cent of Milwaukee and Chicago shipments.	Per cent of Milwaukee shipments.
1905	2,108,721	1.05	10.06	1911	7,367,929	3.22	22.5
1906	1,684,960	.83	6.8	1912	3,833,986	1.57	13.8
1907	1,744,574	.77	6	1913	3,124,923	1.11	9.2
1908	2,703,209	1.29	9.44	1914	7,635,176	2.26	13.8
1909	3,625,227	1.78	18	1915	8,866,803	2.79	16.9
1910	3,953,478	1.86	13.4				

Witnesses for the complainant, as well as for the adverse parties, testified that were the rates the same via all routes the break-bulk routes would not be used to any extent except when other routes were not available. The tariff providing for the break-bulk routes makes the traffic subject to such delays as are incident to the loading into boats and from boats into cars or elevators. The operation of the break-bulk routes is subject to the uncertainties of lake navigation, and is contingent upon a car supply at the eastern termini of the break-bulk boats, the right being reserved to refuse shipments when the elevator is full or cars are not available. The shipper over these routes can not obtain his bill of lading when he delivers his shipments to the boats; he must wait, at times several days, until delivery is made on the east side of the lake.

The Pere Marquette reaches both Chicago and Milwaukee, the former by rail and the latter across Lake Michigan. It is not. however, a short line, and does not handle a substantial tonnage of grain and grain products, between Chicago and trunk line territory. From Milwaukee it meets the competition of the all-rail routes through

Chicago, and the maintenance of the differential is for competitive reasons. On this point we said in the second opinion in *Break-Bulk Rates on Grain, supra*, that—

In this connection the comment may be added that the break-bulk route under certain circumstances may be of great value to the Pere Marquette Railroad in that the railroad is thereby enabled to forward grain which it could not otherwise handle. It would seem to the interest of the Pere Marquette Railroad to maintain this route, at lower earnings if necessary, than via the all-rail or car-ferry routes.

In that case we found, upon proof as to the relative costs of services via the break-bulk and car-ferry routes from Milwaukee, that an increase of 1 cent in the break-bulk rates had been justified. We are now asked to find that the maintenance from Milwaukee, via the break-bulk routes, of rates 1 cent lower than the all-rail rates from Chicago, on grain traffic to the east, unduly prefers the former and unduly prejudices the latter. In this connection we must look to somewhat different considerations from those set forth in the opinions in the other case, and must give weight to the value of the service to the shipper and the ability of the break-bulk route to attract traffic at an equality of rates with the all-rail routes from Chicago and from Milwaukee. The evidence is not convincing that any substantial tonnage of grain or grain products would move via break-bulk routes in the absence of a differential or that the present adjustment results in undue prejudice and disadvantage to Chicago.

Upon consideration of all of the facts of record we are of opinion, and find, that the adjustment complained of has not been shown to be unjust or unreasonable, or unduly prejudicial to Chicago, or unduly preferential of Milwaukee.

There was no testimony presented upon the other issue, namely, the establishment of a break-bulk service from Chicago.

An order dismissing the complaint will be entered.

No. 9104.

CHAMBER OF COMMERCE, HOUSTON, TEX.

v.

ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY ET AL.

FOURTH SECTION APPLICATIONS NOS. 469 AND 627.

PACKING-HOUSE PRODUCTS FROM HOUSTON, TEX., TO POINTS IN OKLAHOMA.

Submitted February 10, 1917. Decided April 2, 1917.

On complaint that rates on packing-house products and lard substitutes in carloads to points in the state of Oklahoma from Houston, Tex., are unreasonable and unjustly discriminatory; *Held*, That the present rates to Oklahoma points from Houston are unjustly discriminatory to the extent that they exceed the distance scale basis of rates approved in *Investigation of Alleged Unreasonable Rates on Meats*, 22 I. C. C., 160, 174. Relief from fourth section departures granted at intermediate points on indirect lines.

W. O. Huggins and *F. A. Lallier* for complainant.

F. R. Dalzell for Gulf, Colorado & Santa Fe Railway Company and Atchison, Topeka & Santa Fe Railway Company.

L. M. Hogsett for International & Great Northern Railway Company and its receiver.

W. E. Briggs for Southern Pacific lines in Texas.

W. J. Dowlin for Chicago, Rock Island & Pacific Railway Company, Chicago, Rock Island & Gulf Railway Company and its receiver.

REPORT OF THE COMMISSION.

HARLAN, *Commissioner:*

In *Investigation of Alleged Unreasonable Rates on Meats*, 22 I. C. C., 160, 174; 23 I. C. C., 656, the Commission prescribed on packing-house products, including lard substitutes, a scale of maximum rates to be applied on traffic moving from points in Texas to destinations in the state of Oklahoma. Rates in substantial accord with this scale, hereinafter referred to as the Oklahoma scale, were thereupon published by the defendants to points in Oklahoma from Fort Worth, Dallas, Sherman, Greenville, and San Antonio, all in the state of Texas. Some years later, in *Houston Packing Co.* v. *H. E. & W. T. Ry. Co.*, 36 I. C. C., 672, we found that the rate of 50

cents on packing-house products from Houston to Oklahoma City was unjustly discriminatory to the extent that it exceeded a rate based on the Oklahoma scale. And in our report we said, page 674:

> The mileage scale basis of rates should be applied from Houston in those cases where such rates apply from Fort Worth. And substantially similar rate relationship should obtain in those instances in which less than mileage scale rates apply from Fort Worth.

Thereupon a two-line rate of 46.5 cents, based on a distance of 481.8 miles, was published by the defendant carriers from Houston to Oklahoma City. The complaint herein alleges that the present rates on these commodities from Houston to destinations in the state of Oklahoma are unreasonable and unjustly discriminatory, being on a higher basis than those fixed in the proceeding first cited. And the Commission is asked to require the defendant carriers to establish from Houston to points in Oklahoma rates based on the Oklahoma scale.

At Houston three companies are engaged in the manufacture of lard substitutes, one of which produces also packing-house products. In the sale of these products the Houston shippers meet with competition from other points in the same state, as well as from Kansas City, Cincinnati, and other producing points. There was offered of record by the complainant a table showing (1) rates in cents per 100 pounds now in effect on packing-house products from Houston, Fort Worth, and San Antonio, to various points in Oklahoma; (2) the respective distances; and (3) the rates that would be applicable based on the Oklahoma scale. For illustrative purposes it will suffice to show nine destinations as follows:

To—	From Houston.			From San Antonio.			From Fort Worth.		
	Distance.	Rate.	Oklahoma scale.	Distance.	Rate.	Oklahoma scale.	Distance.	Rate.	Oklahoma scale.
	Miles.	*Cents.*	*Cents.*	*Miles.*	*Cents.*	*Cents.*	*Miles.*	*Cents.*	*Cents.*
Ada	403	50	41.5	[1] 472 438	45.5	43.5	[1] 186 183	23.75	[1] 23.75
Bartlesville	587	60	52.5	603	55	54.5	[1] 384 348	36.5	[1] 37
Durant	336	50	36.5	[1] 393 371	38	[1] 38	[1] 116	18.5	[1] 19
Guthrie	497	60	47.5	509	48.5	48.5	[1] 236	27	[1] 27
McAlester	421	50	42.5	[1] 468 446	43	[1] 43	[1] 191	24.25	[1] 24.25
Oklahoma City	465	46.5	45.5	478	4[illegible].5	46.5	[1] 205	25	[1] 25
Sapulpa	505	60	48.5	541	51.5	50.5	[1] 296 285	31	[1] 31
Tulsa	519	60	48.5	[1] 582 555	50	[1] 50	[1] 305 299	3[illegible]	[1] 3[illegible]
Woodward	594	60	52.5	607	54.5	54.5	334	36.5	36.5

[1] One-line hauls. Under the Oklahoma scale 2½ cents is added where two or more lines participate.

It is conceded by the complainant that the distances shown in the above table may not be the short-line distances in all cases, and that

they may not be the distances used by the defendants in making up their rate schedules. A check of the distances shown in the table has been made by the tariff department of the Commission and numerous discrepancies have been found to exist. For practical purposes, however, they may be regarded as substantially correct.

Numerous exhibits were also offered in evidence by the complainant in the endeavor to show that the rates from Houston are relatively unreasonable. In view of the attitude of the defendants, however, it is not necessary to discuss those exhibits here. No attempt was made by the carriers to justify the maintenance of a higher basis of rates to Oklahoma points from Houston than the rate basis contemporaneously maintained to the same destinations from Fort Worth and other Texas producing points. While admitting that Houston "should be given the same position" as other producing points, the carriers urge that the Oklahoma scale, as fixed by the Commission, is too low and that the rates involved in this complaint should be disposed of in connection with the *Live Stock and Products Case* now pending before us. The latter is a general investigation instituted by the Commission into rates on live stock and products throughout the entire country, and because of its magnitude and importance the disposition of it will probably require some time; in the meanwhile it does not seem just that Houston shippers should be required to pay charges which the defendants concede to be unduly prejudicial.

Under the facts and circumstances shown of record in this case we are of the opinion, and so find, that rates on packing-house products, including lard substitutes, to all consuming points in Oklahoma are unjustly discriminatory against and unduly prejudicial to Houston, as compared with rates from Fort Worth and other Texas points to the same destinations to the extent that the rates from Houston exceed the rates for the distances involved prescribed in the Oklahoma scale. The rates to junction points should be based on the short-line distance. But carriers with circuitous lines that now meet the short-line rates at competitive points and, by authority of fourth section applications hereinafter referred to and considered herein, have maintained higher rates at intermediate points since August 17, 1910, at which time the amended fourth section of the act to regulate commerce became effective, may continue to meet the rates of the short lines and maintain higher rates to intermediate points; provided that at no intermediate point on such longer lines shall the rates exceed those based on the Oklahoma scale. These findings, of course, are without prejudice to any conclusions that may be reached in *Live Stock and Products Case.*

The rate of 46.5 cents from Houston to Oklahoma City, established by the carriers as the result of our order in *Houston Packing Co.* v.

H. E. & W. T. Ry. Co., *supra*, was based on a distance of 481.8 miles. It is repeatedly stated on this record, however, that the short-line distance between these two points is 465.5 miles; from tariffs on file with the Commission the short-line distance is shown to be 464.5 miles, and for this distance under the Oklahoma scale a rate of 45.5 cents may be charged, a two-line haul being involved. It is apparent therefore that to this extent at least our order in that case has not been complied with by the carriers.

Certain applications of the defendant carriers for relief from the long-and-short-haul clause of the fourth section were set for hearing in connection with this proceeding. Group rates are maintained by the defendants on packing-house products from Houston to points in Oklahoma. One group is defined as follows:

East and south of a line beginning at Terrell, Okla., on the Chicago, Rock Island & Pacific, thence north following the line of that carrier to El Reno; thence east over the same line to and including Munroe; including points on the Missouri, Kansas & Texas from and including McAlester to and including Muskogee. The rate to all points in this group is 50 cents. To all other points in the state of Oklahoma the rate is 60 cents except to Oklahoma City, as above stated. Previous to the decision of the Commission fixing the rate to Oklahoma City there were no departures from the long-and-short-haul rule of the fourth section arising under the group rates except that to a few intermediate points no commodity rates were published, the classification basis of fifth class being used.

When the defendants established the rate of 46.5 cents now in effect to Oklahoma City from Houston no change was made in the rates to intermediate points. The higher intermediate rates of 50 cents on the Atchison, Topeka & Santa Fe and on the Chicago, Rock Island & Pacific and on the other lines being unauthorized, have been and now are unlawful. Fourth section departures now exist also on the Missouri, Kansas & Texas. The distance of the route of this carrier to Oklahoma City from Houston is 607 miles. As before stated, the short-line distance is 464.5 miles, or a difference of 142.5 miles. When the rates prescribed herein are published there will be no departures from the long-and-short-haul rule of the fourth section on any direct line.

Orders, including an order for relief with respect to departures at intermediate points on indirect routes, will be entered in accordance with the findings herein.

Investigation and Suspension Docket No. 938.

CINCINNATI SWITCHING ABSORPTION.

Submitted March 1, 1917. Decided April 19, 1917.

Proposed cancellation of absorptions of switching charges which would result in increased rates on grain in carloads originating at, and on coal in carloads destined to, local stations on the Cincinnati, Indianapolis & Western Railway found not justified. Suspended schedules ordered to be canceled.

Morison R. Waite for respondents.

G. M. Freer for protestants.

Report of the Commission.

By the Commission:

By schedules filed to take effect October 1, 1916, the Cincinnati, Hamilton & Dayton Railway Company and Judson Harmon and Rufus B. Smith, receivers thereof, hereinafter called the respondents, proposed to discontinue the absorption of switching charges of connecting lines at junctions with the Cincinnati, Hamilton & Dayton Railway on grain in carloads originating at local stations on the Cincinnati, Indianapolis & Western Railway, hereinafter called the Indianapolis & Western, and at Cincinnati, Ohio, on coal in carloads from points within the Cincinnati switching limits destined to local stations on the Indianapolis & Western, thereby making higher charges applicable on shipments of grain and coal involving the switching movements as described. Upon protest by the Cincinnati Chamber of Commerce and Merchants Exchange, the schedules were suspended until January 29, 1917, and later until July 29, 1917.

Prior to December 1, 1915, the Indianapolis & Western, which extends from Hamilton, Ohio, to Springfield, Ill., with two short branches running north and south from Hume, Ill., was operated as part of respondents' line. On March 14, 1916, the Indianapolis & Western notified respondents that it would not join in the absorption of switching charges on traffic originating at or destined to Indianapolis & Western local stations. After an unsuccessful effort to persuade the Indianapolis & Western to change its attitude, the respondents, believing that their divisions for their 26-mile haul between Hamilton and Cincinnati were insufficient to justify the absorption of the entire switching charges, filed the schedules here under suspension.

Respondents are willing to continue the absorption provided the Indianapolis & Western participates therein. They admit that prior to December 1, 1915, when they received the entire line-haul rate, their revenue was sufficient to warrant the absorption, but they maintain that to continue such absorption out of their present divisions would make the traffic unremunerative. In support of these contentions they introduced considerable evidence, including exhibits showing rates to and from various local stations on the Indianapolis & Western and divisions thereof, as well as earnings on actual shipments for the month of November, 1916, which is said to be a representative month. An increase in charges can not be justified on the ground that a particular carrier, which transports the shipments over only a comparatively small portion of the entire through route, receives an unsatisfactory division of the joint rate. *Lumber Transit Privileges at Buffalo, N. Y.*, 33 I. C. C., 601, 604, 605.

It is argued that inasmuch as the traffic now involves a two-line haul, an increase in rates is justified; but it was not shown that the additional expense to the carriers, if any, justifies the increases proposed. The Public Utilities Commission of Ohio found that similar increases applicable to intrastate traffic were not justified, and ordered the cancellation of the proposed schedule on or before November 28, 1916.

Respondents contend that this Commission has no authority in this proceeding to require the cancellation of the schedules under suspension, as the Indianapolis & Western, which concurs in the joint rates, was not made a party. This contention is concluded by our decision in *National Dock & Storage Warehouse Co. v. B. & M. R. R.*, 38 I. C. C., 643, 650, in which we said:

> So far as the shipping public is concerned the effect of a switching absorption is to establish a joint rate; the cancellation of an absorption is the withdrawal of a joint rate, leaving effective the higher aggregate of intermediate rates. In such a case both the holding out and the withdrawal of the lower through rate are entirely the act of one of the carriers, which must therefore be prepared to justify the increase caused by the withdrawal.

We find that respondents have not justified the proposed cancellation of absorptions of switching charges which would result in increased rates, and an order requiring the cancellation of the suspended schedules will be entered.

Investigation and Suspension Docket No. 899.

GRAIN TO LITTLE ROCK, ARK.

Submitted January 18, 1917. Decided April 19, 1917.

Proposed increased rates on wheat and corn and their products and on flaxseed, millet seed, and hempseed from points in Oklahoma to Little Rock and other points in Arkansas found not justified, and suspended schedules required to be canceled.

Thomas Bond for St. Louis & San Francisco Railroad Company and its receivers.

W. V. Hardie for Oklahoma Traffic Association.

J. H. Johnston and *Frank Foltz* for Oklahoma Millers Association.

H. L. Bennett for Corporation Commission of Oklahoma.

Report of the Commission.

By the Commission:

By schedules filed to take effect August 15, 1916, the respondents proposed to cancel their applicable joint rates on wheat and corn and their products, and also on flaxseed, millet seed, and hempseed, from all stations, with a few exceptions, on the St. Louis & San Francisco Railroad, hereinafter called the Frisco, in Oklahoma, to Little Rock, Ark., and other Arkansas points on the Chicago, Rock Island & Pacific Railway, hereinafter called the Rock Island, taking the same rates, thereby rendering applicable joint rates shown in another section of the tariff which are from 1 cent to 7½ cents per 100 pounds higher. Upon protests filed by and in behalf of grain millers of Oklahoma, the schedules were suspended until December 13, 1916, and later until June 13, 1917. The Frisco assumed the burden of justifying the proposed rates. Rates are stated in cents per 100 pounds. The evidence adduced relates mainly to flour, which takes the same rates as wheat.

The main line of the Rock Island from Tucumcari, N. Mex., to Memphis, Tenn., runs east and west through central Oklahoma, and several of its branch lines traverse the western half of that state. Blanket rates of 18½ cents on wheat and its products and 17 cents on corn and its products were established in 1908 from practically all main and branch line Oklahoma points on the Rock Island to Little Rock, following a conference participated in by the attorney general of Oklahoma, the millers, and representatives of the carriers,

who agreed that the rates then maintained to Little Rock and certain other destinations were too high. The present rates from Oklahoma points on the Frisco to the Little Rock group by way of the Rock Island, which were established in March, 1910, are lower than the rates in effect prior to that time. In making these reductions, the Rock Island rates were blanketed back to points on the Frisco for a considerable distance, in some instances over 100 miles, on either side of the various junction points of the two lines.

Practically all Oklahoma grain is produced in the western half of the state. The rates proposed from this section average about 2½ cents higher than the present rates. The protestants ship wheat to their mills at El Reno and Oklahoma City, where it may be milled and the product forwarded to the Little Rock territory under a milling-in-transit arrangement at the through rate from point of origin.

The Frisco contends that the present adjustment, under which the junction point rates are blanketed back over the Frisco for a considerable distance, is improper because, as compared with the junction points, the Frisco points require a haul that is longer and over two lines instead of one. It is argued that the rates from the junction points are reasonable, having been in effect for eight years without a complaint being made against them; and that therefore the rates from the Frisco points should be higher for the longer two-line haul in order to produce an equal per ton-mile revenue. But the rates from points on branch lines of the Rock Island are generally the same as the junction point rates. It is urged that in the absence of competition or other controlling influences the combinations of rates on the junctions would be reasonable. The proposed rates average between 70 and 80 per cent of such combinations.

The witness for the Frisco testified that the present rates on grain from the Frisco points to the Little Rock territory are lower than the rates on grain from the same points to Little Rock over other routes and lower than rates to points in Arkansas served by carriers other than the Rock Island that ordinarily take the Little Rock rates. But the distances over the other routes are considerably in excess of the distances over respondents' lines.

The proposed rates are compared with rates from the points of origin to Springfield, Mo., and Hope, Ark., points on the Frisco approximately equidistant with Little Rock from the Oklahoma points. Under the proposed rates to Little Rock the per ton-mile earnings would in most instances be less than the per ton-mile earnings under the present rates to Hope and Springfield. There is little, if any, movement of grain or its products from Oklahoma points to Springfield, which is a milling point for Kansas and

Missouri wheat. A very large part of the haul to Little Rock is over the Rock Island's main line on which the traffic is comparatively heavy and the transportation conditions favorable, while the haul to Hope is entirely over branch lines of the Frisco, on which the traffic is light.

An exhibit was submitted which shows that the proposed rates compare favorably with the rates on grain to the same destinations from points on the Kansas City, Mexico & Orient and the Wichita Falls & Northwestern railways, north and south lines in the extreme western part of Oklahoma. Protestants contend that the transportation conditions on the Wichita Falls & Northwestern are less favorable than those on the Frisco, the former being a comparatively new line, on which the traffic is light.

Witnesses for protestants testified that the Little Rock territory is the most important market open to the Oklahoma mills; that competition is keen, and that an increase of 2½ cents in the freight rate would place them at a great disadvantage as compared with competing millers located in other sections. They urge the fact that the present rates have been maintained for several years as indicating that the carriers considered them reasonable.

Protestants show that wheat and its products from Oklahoma points on the Frisco and the Rock Island to Memphis generally move under a blanket rate of 20 cents. A few points outside of the blanket territory take a higher rate. The average distance to Memphis from 22 representative points on the Rock Island is said to be 573 miles and for this average distance the 20-cent rate yields 7 mills per ton-mile. From 21 representative points on the Frisco the average distance to Memphis is 646 miles, and the average rate of 21.4 cents on wheat and its products yields a per ton-mile revenue of 6.6 mills. From these Frisco points to points in the Little Rock territory, the average distance is said to be 440 miles and the average rate 20.3 cents, yielding a per ton-mile revenue of 9 mills. In *Wheat Rates from Oklahoma Points*, 30 I. C. C., 93, and 41 I. C. C., 389, proposed increases in the then rates to Memphis, which are the same as those now in effect, were found not justified. With respect to the rates to Memphis, the Frisco observes that they apply for one-line hauls while the movement to the Little Rock territory is over two lines. The distances to the Little Rock territory are materially less than to Memphis.

A report filed with the Corporation Commission of Oklahoma by the Rock Island shows that its average per ton-mile revenue on all flour between points in Oklahoma and points in other states for the year ended June 30, 1915, was 7.2 mills. A similar report filed by the

Frisco shows that its average per ton-mile revenue on like traffic for the same period was 5.9 mills.

Numerous comparisons submitted by protestants indicate that the proposed rates would be relatively higher than the rates on like traffic between certain other points in the same territory.

We find that respondents have not justified the increased rates proposed, and the suspended schedules will be ordered canceled.

DANIELS, *Commissioner*, dissents.

No. 6797.

STANDARD ROOFING COMPANY ET AL.

v.

MISSOURI, KANSAS & TEXAS RAILWAY COMPANY ET AL.

Submitted June 9, 1916. Decided April 19, 1917.

Following original report, reparation awarded on carload shipments of prepared roofing paper and building paper, including roofing nails and cement used in connection therewith, from East St. Louis, Ill., and Kansas City, Mo., to Muskogee, Tulsa, and McAlester, Okla.

R. D. Sangster for complainants.

R. C. Trovillion for Missouri, Kansas & Texas Railway Company.

REPORT OF THE COMMISSION ON SUPPLEMENTAL HEARING.

BY THE COMMISSION:

We found in our original report in this case, 34 I. C. C., 3, that the rates charged on prepared roofing paper and building paper in carloads from East St. Louis, Ill., St. Louis and Kansas City, Mo., to Muskogee, Tulsa, and McAlester, Okla., were and for the future would be unreasonable to the extent that they exceeded and might exceed the following rates, which are stated in cents per 100 pounds: From St. Louis and East St. Louis to Muskogee 37 cents, to Tulsa 38 cents, and to McAlester 40 cents; and from Kansas City to Muskogee 26 cents, to Tulsa 27 cents, and to McAlester 29 cents. The rates prescribed were made effective July 15, 1915. Reparation was awarded on shipments made by the Standard Roofing Company, the

only complainant appearing at the hearing. The case was reopened at the instance of the Patent Vulcanite Roofing Company, Minnetonka Lumber Company, and the Russell Hardware Company, complainants in the original case, for further hearing on the question of reparation.

The Patent Vulcanite Roofing Company asks reparation on 18 carload shipments of prepared roofing and building paper shipped between April 23, 1912, and June 8, 1915, inclusive. Sixteen of these shipments, all of which originated at Kansas City, moved to Muskogee, Tulsa, and McAlester; and charges were paid and borne by the Patent Vulcanite Roofing Company on 14 of such shipments and on 2 by the American Roofing Company, based on the rates found unreasonable in our original report herein. The capital stock of the latter company has been owned by stockholders of the former company since January, 1910; but it was independently operated until March, 1913, when its assets and liabilities were taken over by the Patent Vulcanite Roofing Company. A claim covering these shipments was presented at the original hearing on behalf of the American Roofing Company, not a party complainant. The two remaining shipments moved to Sand Springs and Pryor, Okla. As the rates to those points were not assailed in the original complaint, a claim for reparation on these shipments can not be considered in this proceeding.

The Minnetonka Lumber Company asks reparation on 5 carloads of roofing and building paper, with which were included roofing nails and cement used in the laying of the paper. These shipments moved from East St. Louis to Muskogee, 1 on November 24, 1913, on which a rate of 47 cents was applied, and 4 between August 20, 1914, and February 10, 1916, inclusive, on which a rate of 41 cents was applied. Charges on all of these shipments were paid and borne by the Minnetonka Lumber Company. In establishing the rate of 37 cents to Muskogee, prescribed in our order, defendants restricted the description of the commodity so that it excluded the roofing nails and cement, which, by trade custom, are always shipped therewith and which were incidentally included in the former description. The rates found unreasonable in our original report herein were those applicable to the commodities as then described. Two carloads, shipped September 18, 1915, and November 23, 1915, were charged the former rate of 41 cents because the shipments contained roofing nails and cement, and are within the scope of the prayer for reparation. By tariff supplement, effective December 24, 1915, defendants removed the restrictions, thereby conforming their tariffs to the Commission's original order. The shipment moving February 10, 1916, was overcharged.

The Russell Hardware Company asks reparation on 12 carloads of roofing and building paper, with which were included roofing nails and cement. The shipments moved between April 25, 1912, and May 7, 1914, inclusive. Charges on 9 of the shipments, on all of which a rate of 47 cents was applied, were paid and borne by the Russell Hardware Company. The charges on the other 3 were not borne by it, and on these shipments it is not entitled to reparation.

We find that as to the shipments remaining to be considered, the Patent Vulcanite Roofing Company, the Minnetonka Lumber Company, and the Russell Hardware Company made those shipments as described and paid and bore charges thereon at rates found in our original report herein to have been unreasonable; that they have been damaged to the extent of the difference between the charges paid and the charges which would have accrued at the rates found reasonable in that report, and that they are entitled to reparation, with interest, on shipments delivered within the statutory period. The exact amount of reparation due can not be determined upon the present record. Complainants should prepare statements showing the details of the shipments, not barred by the statute of limitations, in accordance with rule V of the Rules of Practice, which statements should be submitted to defendants for verification. Upon receipt of statements so prepared and verified we shall consider the entry of an order awarding reparation. The overcharge referred to may be included in the statement to be submitted.

No. 7416.

AMERICAN RADIATOR COMPANY

v.

LEHIGH VALLEY RAILROAD COMPANY.

Submitted April 3, 1916. Decided April 19, 1917.

Demurrage charges on certain interstate shipments of various commodities in carloads held at Bayonne, N. J., found to have been unlawfully assessed. Reparation awarded.

J. H. Taylor for complainant.

R. W. Barrett for defendant.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the manufacture of cast-iron radiators and boilers, with its principal office at Chicago, Ill. By complaint, filed October 8, 1914, as amended, it alleges that defendant unlawfully collected $477 demurrage charges on 108 carloads of various commodities held at Bayonne, N. J., during July and August, 1912. Reparation is asked. The claim was presented to the Commission informally February 12, 1914.

About the middle of May, 1912, upon completion of its warehouse at East Forty-ninth street, Bayonne, complainant began to receive shipments from its several plants and to store the same for subsequent distribution during the winter months. Except as hereinafter stated, all of the shipments were of this character, and originated at points without the state of New Jersey. Four of the cars, which were forwarded from defendant's East Twenty-second street station, Bayonne, were so-called ferry cars and were loaded with less-than-carload shipments which had accumulated at that station. There is no evidence that any of the last-mentioned cars contained interstate shipments, and the demurrage charges assessed thereon, aggregating $20, will not be further considered. On the remaining 104 cars, all of which contained radiators and boilers, except one which contained vacuum cleaners, demurrage charges were collected in the sum of $459. This amount includes a $2 demurrage charge which is not attacked.

During the period in question complainant's warehouse was connected with defendant's tracks by a private siding on which about nine cars could be placed for the purpose of unloading. Prior to

July 15, 1912, cars arriving at Bayonne consigned to complainant, together with cars for other industries in the Bayonne territory, were held at defendant's yard at Constable Hook, about 1 mile from complainant's warehouse, from which yard they were switched to complainant's siding. At that time defendant's practice was to furnish a daily shifting service in connection with the receipt and delivery of cars in that vicinity. During the early part of July, 1912, cars consigned to complainant arrived at defendant's yard in excess of the number unloaded. About July 15, 1912, defendant's eastbound track leading to complainant's siding was utilized as a storage track for complainant's cars, and the cars which had accumulated at Constable Hook were assembled and placed on that track. The demurrage in issue accrued between the time of the alleged constructive placement of the cars on the storage track, during the period from July 20, 1912, to August 6, 1912, inclusive, and the time they were unloaded and released. Defendant's demurrage rules then in effect provided, in part, as follows:

RULE 4.—*Notification.*

(*a*) Consignee shall be notified by carrier's agent in writing, or as otherwise agreed to by carrier and consignee, within 24 hours after arrival of cars and billing at destination, such notice to contain point of shipment, car initials and numbers, and the contents, and, if transferred in transit, the initials and number of the original car. In case car is not placed on public delivery track within 24 hours after notice of arrival has been sent, a notice of placement shall be given to consignee.

(*c*) Delivery of cars upon private or industrial interchange tracks, or written notice to consignee of readiness to so deliver, will constitute notification thereof to consignee.

RULE 5.—*Placing cars for unloading.*

(*a*) When delivery of cars consigned or ordered to private or industrial interchange tracks can not be made, on account of the act or neglect of the consignee, or the inability of consignee to receive, delivery will be considered to have been made when the cars were tendered. The carrier's agent must give the consignee written notice of all cars he has been unable to deliver because of the condition of the private or interchange tracks or because of other conditions attributable to consignee. This will be considered constructive placement.

They further provided that no demurrage charges would be assessed for the detention of cars because of delayed or improper notice, or because of defendant's errors or omissions.

Complainant's allegation that these demurrage charges were unlawfully assessed is based upon the sole contention that notice of constructive placement of the cars was not given in accordance with the provisions of the tariff. Its witnesses testified that while complainant received advice from its several plants as shipments were consigned to it at Bayonne, it was not concerned about any delay in their arrival in view of the purpose for which they were made,

and that prior to the placement of the cars upon its siding complainant had no reason to believe that they had arrived; that no notice whatsoever either as to the arrival of any of the cars or of their being held for placement was received by complainant; that until the presentation of the demurrage claims it was unaware that such charges had accrued; that had it been notified promptly that the cars were being held for placement it could have arranged to unload them on its siding within the free time; and that large numbers of cars were received prior and subsequently to the period in question upon which no demurrage accrued. Had the periods of detention been computed from the time the cars were placed on the siding no demurrage would have accrued except on one, and the $2 charge which accrued thereon after placement on complainant's siding is not assailed.

A witness for defendant testified that on July 20, 1912, he personally served upon an employee of complainant, who would ordinarily receive it, written notice of the constructive placement of about 65 cars held on the storage track on that date; that the employee in question refused to sign the original of the notice; and that thereupon, in accordance with the usual custom, the witness delivered the original to complainant's employee and certified on the carbon copy that he had done so. Complainant's employee denies that he received this notice. What purports to be the carbon copy in question was filed as an exhibit. According to defendant's records the last three car numbers shown thereon did not arrive at Bayonne until after July 20, 1912, and therefore could not have been included in the notice alleged to have been served upon complainant on that date.

We find that on 30 of the cars in issue notice of constructive placement was given to complainant on July 20, 1912, as shown by the copy of notice above referred to, and that the demurrage charges thereon aggregating $119 were legally assessed. The other cars listed in the notice are not in issue.

The remaining 74 cars involved, on which the demurrage charges aggregated $338, were placed on the storage track subsequently to July 20, 1912. As to these cars defendant's records fail to show a compliance with the notification requirements of its tariff, and defendant admits that, due to the inexperience and ill health of the clerk charged with the duty of serving notices and keeping the records, complainant probably received no notices. We find that these demurrage charges were not authorized by defendant's tariff and were therefore unlawfuly assessed; that complainant paid and bore the charges herein found unlawful; and that it is entitled to reparation in the sum of $338, with interest. An order will be entered accordingly.

INVESTIGATION AND SUSPENSION DOCKET No. 948.

RICE PRODUCTS TO JACKSON, MISS.

Submitted March 7, 1917. Decided April 19, 1917.

Proposed increased rate on rice bran, rice chaff, rice polish, and ground rice hulls in carloads from New Orleans, La., to Jackson, Miss., found not justified. Suspended schedules ordered canceled.

G. B. Auburtin for New Orleans Great Northern Railroad Company.

George Butler for protestant.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

By schedules, filed to take effect October 15, 1916, the New Orleans Great Northern Railroad Company, hereinafter called the respondent, proposed to increase its present commodity rate of 9 cents per 100 pounds, minimum 30,000 pounds, on rice bran, rice chaff, rice polish, and ground rice hulls, in carloads, from New Orleans, La., to Jackson, Miss., to 14 cents per 100 pounds, minimum 24,000 pounds. Upon protests filed on behalf of the Hannah Distributing Company, R. H. Green, and the Royal Feed & Milling Company, of Jackson, the schedules were suspended until February 12, 1917, and later until August 12, 1917.

The tariff situation brought to the attention of the respondent at the hearing, and not satisfactorily explained, is determinative of this proceeding. The present commodity rate on rice bran, rice polish, and ground rice hulls from New Orleans to Memphis, Tenn., is 10 cents per 100 pounds, minimum 24,000 pounds. This rate applies through Jackson by way of respondent's line in connection with other carriers. No change is proposed in the rate to Memphis. The proposed increased rate to Jackson, if allowed to become effective, would result in a departure from the long-and-short-haul rule of the fourth section.

Without considering the intrinsic reasonableness of the proposed rate, and confining our attention to the threatened departure from the long-and-short-haul rule of the fourth section, we find that respondent has not justified the proposed increased rate. An order requiring the cancellation of the suspended schedules will be entered. *Yarn From Skowhegan, Me.*, 42 I. C. C., 241.

INVESTIGATION AND SUSPENSION DOCKET No. 943.

FRESH MEATS FROM ST. LOUIS, MO.

Submitted February 26, 1917. Decided April 19, 1917.

Proposed cancellation of proportional commodity rate on fresh meats in carloads from St. Louis, Mo., to Fort Worth and North Fort Worth, Tex., applicable on shipments consigned through from New York, N. Y., and Jersey City and Newark, N. J., found not justified, and suspended schedules ordered to be canceled.

J. B. Coffey for Atchison, Topeka & Santa Fe Railway Company.

R. D. Williams for Missouri, Kansas & Texas Railway Company and receiver; Missouri, Kansas & Texas Railway Company of Texas and receiver; and St. Louis & San Francisco Railroad Company.

F. B. Clark for Missouri Pacific Railway Company; St. Louis, Iron Mountain & Southern Railway Company; and Texas & Pacific Railway Company.

H. K. Crafts for Armour & Company.

R. D. Rynder and *R. O'Hara* for Swift & Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

By schedules, filed to take effect October 7, 1916, respondents proposed to cancel their proportional commodity rate of 68½ cents per 100 pounds on fresh meats in carloads from St. Louis Mo., to Fort Worth and North Fort Worth, Tex., applicable on shipments consigned through from New York, N. Y., and Jersey City and Newark, N. J., leaving applicable a local commodity rate of 89.3 cents per 100 pounds. Upon protest by Swift & Company and Armour & Company, the schedules were suspended until February 4, 1917, and later until August 4, 1917. Rates are stated in amounts per 100 pounds. The destination points will be referred to as Fort Worth.

The present rate of 68½ cents was established November 10, 1914, by all routes in order to equalize the sum of the rates to and beyond Wichita, Kans. A proportional commodity rate of 24½ cents, applicable on traffic destined to or coming from points east of the Indiana-Illinois state line, applied between St. Louis and Wichita until June 1, 1916, when it was canceled as to westbound traffic only, because there was no movement in that direction, leaving applicable the local commodity rate of 64½ cents. The rate from Wichita to

Fort Worth is 44 cents. The proposed through rate is equal to the present lowest combination, composed of 53 cents to Texarkana, Ark., and 36.3 cents beyond.

Respondents contend that the increase in the Wichita combination justifies an increase in the through rate from St. Louis to Fort Worth to the lowest existing combination of rates, provided the third-class rate, which they allege is the normal basis for fresh meats in that territory, is not exceeded. The third-class rate from St. Louis to Fort Worth is $1.04. A similar position was taken by the respondents in *Omaha-Oklahoma Fresh-Meat Rates*, 28 I. C. C., 454, in which we held that the proposed increased rates, some of which were third class, while others were lower, had not been justified.

Fresh meats in western classification territory generally move under rates lower than third class. The third-class rate of 61.4 cents from New York to St. Louis, 1,063 miles, which was found reasonable in *Dressed Beef from New York, N. Y.*, 38 I. C. C., 51, yields a ton-mile revenue of 11.55 mills and, based upon a carload minimum of 20,000 pounds, a car-mile revenue of 11.55 cents, whereas the earnings under the proposed rate from St. Louis to Fort Worth for the distance by way of the St. Louis & San Francisco Railroad, 737 miles, would be 24.23 mills per ton-mile and, based upon the minimum of 20,000 pounds, 24.23 cents per car-mile.

Respondents compared the proposed rate with the rates prescribed in *Dallas Chamber of Commerce* v. *A., T. & S. F. Ry. Co.*, 40 I. C. C., 619, on hand agricultural implements, metallic shells, baking powder, grapes, lamp chimneys, and machinery, all rated third class in western classification, from St. Louis to Fort Worth, and the earnings per car and per car-mile thereunder. The earnings under the rates cited, which are greater than the earnings under the proposed rate, are computed on substantially higher minima, except as to grapes and machinery, on which the minima are 20,000 and 14,000 pounds, respectively.

Numerous comparisons submitted by protestants indicate that the proposed rate would produce ton-mile earnings substantially in excess of those produced under rates applying to the same and other perishable commodities in the same general territory.

Based upon the scale prescribed in *Investigation of Alleged Unreasonable Rates on Meats*, 22 I. C. C., 160, the rate from St. Louis to Fort Worth by way of the St. Louis & San Francisco Railroad, 737 miles, would be 71 cents. Neither the short-line distance nor the average distance for all routes is shown. Respondents use a distance of 720 miles, for which distance the rate would be 69 cents. Respondents contend that this scale takes into consideration the inbound movement of live stock to the markets considered, viz,

Wichita, Fort Worth. and Oklahoma City, Okla., and the movement of the products from the markets to the destination territories involved; that it did not apply from the Missouri River markets or from St. Louis or Chicago, Ill., to Texas; and that because of different conditions it is not a proper measure of the reasonableness of the rate in issue. The application of this scale was, however, extended to traffic from St. Louis and Kansas City, Mo., to points in Arkansas and Louisiana in *Rates on Fresh Meats and Packing-House Products*, 23 I. C. C., 652; and in *Omaha-Oklahoma Fresh-Meat Rates*, *supra*, we said:

Since the rates now in effect from Omaha, South Omaha, St. Louis, East St. Louis, and St. Paul to Oklahoma destinations are on a higher basis than those proposed by us in *Investigation of Alleged Unreasonable Rates on Meats*, *supra*, for the movement between points in New Mexico, Texas, Oklahoma, Arkansas, Missouri, and Louisiana, it would seem that the proposed increase is not proper.

The rate from St. Louis to Texarkana is based on the scale referred to, but the rate beyond is on a considerably higher basis.

We find that respondents have not justified the proposed cancellation of the proportional commodity rate in issue, and an order will be entered requiring the cancellation of the suspended schedules. This, however, is without prejudice to the conclusions we may reach on the more comprehensive record to be made in *Live Stock and Products Case*, Docket No. 8436, now pending.

IRON ORE RATE CASES.[1]

Submitted February 3, 1917. Decided April 25, 1917.

Upon supplemental proceedings, the findings and conclusions announced in the original report herein are confirmed and the tentative tariffs submitted by the respondents as required are, with certain minor exceptions, approved. Order entered accordingly.

George B. Gordon for Pennsylvania lines.

Charles S. Belsterling for Bessemer & Lake Erie Railroad Company, Union Railroad Company, and others.

Clyde Brown and *John M. Sternhagen* for New York Central Railroad Company, Pittsburgh & Lake Erie Railroad Company, and Toledo & Ohio Central Railway Company.

T. H. Burgess for Erie Railroad Company.

William Ainsworth Parker for Baltimore & Ohio Railroad Company.

George C. Wilson for Monongahela Connecting Railroad Company.

J. R. Ruffin for Norfolk & Western Railway Company.

Robert F. Denison for Wheeling & Lake Erie Railway Company.

O. S. Lewis for Cincinnati, Hamilton & Dayton Railway Company and receivers.

E. A. Niel for Buffalo, Rochester & Pittsburgh Railway Company.

H. C. Clevenger for Pennsylvania Railroad Company east of Pittsburgh and Erie.

Wade H. Ellis, *Challen B. Ellis*, *Willis F. McCook*, *Wallace H. Rowe*, and *A. R. Kennedy* for Pittsburgh Steel Company.

Frank Lyon and *I. P. Blanton* for Ironton-Ashland Manufacturers' Association.

Jean Paul Muller for Ashtabula & Buffalo Dock Company, Erie Dock Company, and others.

R. F. Grant for Ohio & Western Pennsylvania Dock Company.

A. E. Singleton for Whitaker-Glessner Company.

H. C. Crawford and *J. C. Davies* for Cambria Steel Company.

W. D. McKeefrey for McKeefrey Iron Company.

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[1] The proceeding embraces No. 6210, In the Matter of Rates on Iron Ore in Carloads from Lake Erie Ports to Points in Ohio, West Virginia, and Pennsylvania; and complaints in No. 4608, Youngstown Sheet & Tube Company et al. *v.* Lake Shore & Michigan Southern Railway Company et al.; No. 6026, Wheeling Steel & Iron Company *v.* Pennsylvania Company et al.; and No. 6027, Pittsburgh Steel Company *v.* Lake Shore & Michigan Southern Railway Company et al.

Richard Jones, jr., for Youngstown Sheet & Tube Company and others.

Wilson & Evans and *F. A. Ogden* for Jones & Laughlin Steel Company.

W. F. Morris for Pittsburgh Crucible Steel Company.

W. H. Higgins for Wheeling Steel & Iron Company.

Supplemental Report of the Commission.

Harlan, *Commissioner:*

Supplemental proceedings were desired by the Commission in this case in order that the amended tariff schedules proposed by the respondents in compliance with the findings and suggestions of the original report, 41 I. C. C., 181, might have the scrutiny of the parties in interest and the careful examination of the Commission before a final order is entered fixing the maximum rates, charges, rules, and regulations to be observed for the future by the respondent carriers in the handling of their iron-ore traffic in the territory in question. The whole matter is now before us for final disposition in the light of the comments and criticism made upon the further argument.

The history of this important investigation and the occasion for entering upon it were explained in the original report (id., pp. 183, 185) where reference is made to the complaints then pending or disposed of, in which various phases of the iron-ore rate adjustment were involved. The Commission's purpose in instituting the inquiry was to take a close look at the entire situation with a view to establishing just, reasonable, and nondiscriminatory rates, rules, and regulations, and the need of such an inquiry was emphasized as the investigation proceeded and the conflicting interests of the various industries and carriers were developed. The statement on the supplemental argument that matters not complained of had been passed upon and that the Commission exceeded its authority in suggesting on certain movements higher aggregate charges than those now in effect, was therefore based upon a misapprehension of the scope of the investigation. In undertaking an examination of the whole rate adjustment with a view to ascertaining whether in any feature it is unreasonable or discriminatory it was the Commission's duty to point out any such inconsistencies appearing in it and to suggest a basis for their correction, even though that might involve somewhat higher rates for particular furnaces. That comment may therefore be dismissed with the statement that every phase of the situation investigated was the subject of formal or informal complaint by shippers, either before or after the general investigation was commenced.

Relatively little was said upon the supplemental proceedings respecting the general underlying principles announced by the Commission in the original report. Much of the comment made was directed to specific findings with respect to existing rates, practices, etc., under which particular furnaces have enjoyed advantages that are inconsistent with the general revision suggested by the Commission, and the benefit of which they are naturally reluctant now to lose. It was also said by counsel representing certain of the furnaces that the schedule of charges submitted would result in an appreciable increase in the carriers' revenues. In the original report we found that the iron-ore traffic was not paying an undue proportion of the carriers' earnings (id., p. 198), and under the rate adjustment there outlined by the Commission no substantial impairment of their revenues was intended. On the other hand, no material increase was contemplated or was justified upon the record before us.

The figures offered by one of the furnace interests. to show that the carriers' revenues would be increased under the proposed adjustment, included revenues accruing under the charges now assessed by the carriers for handling slag and other waste materials from the furnaces, a service that had been performed by the carriers without charge until their right to make a charge was affirmed in *Charges for Transportation and Disposal of Waste Material*, 34 I. C. C., 337. The estimated increase in revenues also takes into consideration the discontinuance in some cases and the modification in others of allowances by the carriers to furnaces performing certain services on their own industrial tracks. Moreover, the estimate does not include the reduction in the carriers' revenues resulting from the adjustment made under our findings and order in *Pittsburgh Steel Co.* v. *L. S. & M. S. Ry. Co.*, 27 I. C. C., 173.

Both the furnace operators and the carriers seem to concur in thinking that under the proposed schedule there will be a decrease in the relative volume of dock ore, as to which some increase in the charges is proposed; but whether the application of the new charges will result, on the whole, in an increase of revenue or whether shippers will make less use of the storage docks and thereby decrease the aggregate of carriers' revenues for dock ore is a question resting in conjecture. In any event, a careful examination of the figures submitted on both sides satisfies us that if the revenues are increased as the result of the proposed rates and charges it will be to a relatively small extent, and will not impose any substantial additional burden on the iron-ore traffic. In this connection it will be recalled that the rates on this traffic were not considered and finally disposed of in *The Five Per Cent Case*, 32 I. C. C., 325, 331, because this investigation was already in progress when the proposal of the carriers in

that case to increase their general rate schedules was laid before the Commission.

In view of the course of the supplemental hearings one or two of the questions raised may, with advantage, be briefly considered.

SEPARATION OF CHARGES FOR DIFFERENT SERVICES.

In the original report the special conditions surrounding the transportation of iron ore in this territory, and the need of a separation of the charges for the several different services performed by the carriers in connection with that traffic, were fully explained. As to the propriety of separately stating the charges for the services performed at railroad docks, there can be no question. As to the proposed separate charge for making deliveries on private industry tracks, some of the furnace interests offered no objection upon the supplemental proceedings. Other furnace interests, however, urged that a flat charge should be assessed to cover all services from the rail of the vessel to the point where the ore is finally unloaded within the plant. The matter was discussed at length in the original report (id., pp. 198–207), and some of the cases cited at the further argument are there considered and discussed.

It will suffice, therefore, to point out here that in every proceeding in which we have had occasion to consider the traffic of steel industries in the territory embraced in this proceeding the great differences in the physical conditions affecting the receipt and delivery of freight within the plant inclosures have been brought to our attention and have been the occasion of comment by the Commission. In its supplemental report in the *Industrial Railways Case*, 32 I. C. C., 129, with an exhaustive record before it showing simple internal conditions at some steel industries and very complicated conditions at others, the Commission took the position that it was impossible to consider their industrial railways collectively, but that each must be examined into separately, and in a number of reports since announced we have been considering them one by one.

Where the service inside the plant is performed by the industrial railway the conditions and complexities within the plant, so far as they affect the cost of making delivery, will take care of themselves if the carriers' charge for the line haul is separately stated. But at many of the industries the trunk lines are called upon to perform the work, and it is manifest that the attempt here to establish a just, reasonable, and nondiscriminatory rate structure for this traffic will fail unless their charges for making deliveries inside the plants are separately stated, varying according to the track complexities and other conditions obtaining within the plant inclosure and directly

affecting the cost to the carrier of performing the service. The chief objection offered to the separation of the delivery charge from the line-haul charge concedes that such differences in internal physical conditions exist and that they affect the cost of the service, and the suggestion made was that they be taken care of by differences in the allowances out of the rate to the industries performing the services.

In our original report we suggested that the charges for the services on private industry tracks should be based on the engine-hour costs, and in the tariffs submitted for examination the carriers have followed that suggestion, having, it appears, conducted a special inquiry as to the conditions obtaining at each individual furnace at which such charges are proposed. During the course of the supplemental proceedings none of the furnaces offered any criticism of the charges as proposed by the carriers.

GROUPING OF FURNACE POINTS.

In our attempt to establish reasonable and nondiscriminatory rates applicable to the traffic here under consideration we found it necessary to make some changes in the grouping of destination points, and upon the supplemental proceedings objections to this course were made on behalf of several furnace interests that will be adversely affected by these changes. The principal objection came from furnaces at Monessen and Donora, which we grouped with Johnstown, and from furnaces at Leetonia and New Castle which, together with Dover,[1] were included in a new group designated in the original report as the Leetonia group. Under the present rate structure Monessen and Donora take the Pittsburgh district rate on ore and the other three furnaces take the valleys district rate. Under the proposed grouping each of the five furnace points will take higher rates than the other points in the district of which it is now a part.

No contention was made on the supplemental argument respecting the proposed grouping of Dover, but as to Donora, New Castle, and Leetonia it was urged that they have for a number of years been accorded the same rates on ore and to a certain extent the same rates on other raw materials and outbound manufactured products as the other furnaces in the district in which they now are, and that commercial and competitive conditions require that the present grouping be not disturbed. These objections, however, were of a general nature and nothing specific in the way of alleged errors on the part of the Commission in fixing the groups was pointed out, the objections being largely confined to a general discussion in favor of the

[1] Formerly known as Canal Dover.

present grouping. The same argument was advanced with respect to Monessen, but in addition it is alleged that the Commission in *Pittsburgh Steel Co.* v. *L. S. & M. S. Ry. Co.*, *supra*, definitely decided that this furnace point is in the Pittsburgh district and that now to disturb this grouping would be to reverse our finding in that case. In that proceeding, however, the only question passed upon was with respect to discrimination as between the Wheeling district and the Pittsburgh district as those districts existed at that time. No investigation was made of the grouping as such, nor was that question raised or considered. That the grouping was not there definitely approved or established is evidenced by the fact that a few months after the report was issued certain carriers reduced their rates to two points in the Wheeling district, thus disrupting that district, and this action was approved by the Commission (id., p. 185).

In the original report the matter of grouping was discussed at some length and the necessity for a regrouping of the furnace points in some of the districts in order to bring about a more just and equitable rate adjustment explained. No facts were called to our attention and no arguments were advanced upon the supplemental proceedings that would justify us in a further discussion of this subject except as to Donora and Monessen. While Donora entered only a somewhat general objection to the proposed change, there was a strenuous protest on the part of Monessen against being placed in a higher rate territory than it now is. The question is one of no small importance and we shall therefore not now disturb Donora and Monessen as points in the Pittsburgh district; and while the order herein will not require that course we shall nevertheless expect the carriers to establish for the present to Donora and Monessen the rates prescribed to the Pittsburgh-Wheeling group, pending a further consideration of the matter.

ALLOWANCES TO PRIVATE AND INDEPENDENT DOCKS.

No opinion was expressed in the original report as to what, if any, allowances should be made by the carriers on ore moved by them to inland points from docks not owned or operated by the carriers but owned and operated by independent or private interests. There are six or seven of such docks of which only one, the dock of the Pittsburgh & Conneaut Dock Company at Conneaut Harbor, is reached directly by the rails of a trunk line carrier, namely, the Bessemer & Lake Erie Railroad. The remainder of these docks are reached only by industrial railways owned or controlled by the companies owning the docks. The Pittsburgh & Conneaut Dock Company is a sub-

sidiary of the United States Steel Corporation and all the ore handled over its dock moves out over the Bessemer & Lake Erie, also a subsidiary of the corporation, and practically all of it goes to furnaces owned or controlled by the corporation. In fact the Bessemer & Lake Erie publishes rates on ore only to furnace points at which there are corporation furnaces, the single exception to this rule being Butler, a nonfurnace point on its rails in the state of Pennsylvania, to which a very small tonnage of ore is handled over the dock at Conneaut Harbor. The total tonnage of ore shipped from the Pittsburgh & Conneaut dock exceeds the tonnage from any other dock at the lower Lake Erie ports. Notwithstanding the fact that all but an insignificant amount of this tonnage is for the steel corporation, it is claimed for this dock that it is a public utility and is therefore bound to handle the ore of other shippers when tendered. It is our understanding that the Bessemer & Lake Erie, for the dock company, has now proposed the same dock charges, in cents per ton, as those suggested in the original report for application at the docks of the line-haul carriers.

In the original report the Conneaut dock is referred to as an independent dock, while the other nonrailroad docks are designated as private docks. The distinction grows out of the fact that each of the latter docks is an adjunct to or an integral part of a furnace plant immediately adjoining on the lake front. The primary purpose of each of these private docks is to serve its own plant with the ore received by vessel, and at one or two of them practically all the ore received is used by the industry of which the dock is a physical part. From other of these docks a considerable tonnage of ore is forwarded to furnaces in the interior owned or operated by the same interests that own the dock. A small tonnage of ore is handled over these docks and shipped to furnace operators having no interest in the dock, but such shipments are merely incidental to the main purpose for which the docks were constructed and are used, namely, to serve the industry to which they belong.

Under the tariffs now in effect the rates on ore are applicable from the rail of the vessel. Such through rates apply on the ore handled over all the docks whether they be railroad or private docks. The carriers in the tentative tariffs submitted proposed to continue the present arrangement with respect to the ore shipped from private docks. That is to say, the rates are to be applicable from the rail of the vessel, and out of the through charges the private docks are to be allowed 2 cents a long ton on direct ore and 10 cents a long ton on dock ore in accordance with the present practice.

Certain of the private dock companies take the position that if the railroads are to be allowed to charge at their own docks 6 cents

a ton for the service of handling direct ore from the rail of the vessel to the car and 26 cents a ton for handling dock ore from the rail of the vessel to the dock and thence to the car the same allowance should be made to the private docks for shipments of ore handled by them. It is further contended by certain of the private docks that our original report specified the charges which the carriers were entitled to receive for the line-haul services and that under the arrangement now proposed by them for shipments handled over private docks the line-haul charges will be exceeded to the extent of 4 cents a ton on direct ore and 16 cents a ton on dock ore. Some such difference in earnings results from the arrangement now in effect; for it is clearly and conclusively shown by the record that the allowances the carriers now make to the private docks are much less than the actual out of pocket costs to the carriers of the service they perform at their own docks. It must follow therefore that they receive a greater compensation for the line-haul service in connection with the ore handled over private docks than they receive for the line hauls when the ore moves over their own docks. The Commission's investigation and report have simply brought this fact to light.

The carriers take the position that under the findings in our original report they could have established the line-haul rates suggested and eliminated entirely any charges for the dock services performed by the private docks, leaving these charges to be determined by agreement between the shippers and those operating the docks. It is further stated that this course would have been open to the following objections:

1. It is in the interest of the shippers that the published tariffs should include the dock service, otherwise shippers would not know the rate paid by their competitors, even those shipping over the same private dock.

2. The failure to include in the published rates the charges for the dock service over the private docks would have destroyed the present uniformity of rates and would have been likely to result in a diversion of tonnage from the carriers' docks to the private docks.

The carriers take possession of the ore handled over their own docks from the time it is removed from the hold of the vessel in which it reaches the lake port and it remains in their possession in transit until delivered to the consignee at destination, whether forwarded from the port immediately as direct ore or stored on the dock and later shipped out as dock ore. The ore handled over the private docks, however, does not come into the possession of the carriers, nor are they in any way liable or responsible therefor until it is loaded into the cars and accepted by them for shipment. It is in the possession and control of the private docks after its removal from the vessel until put into the cars.

As heretofore pointed out, each of these private docks is an integral part of a furnace plant, and only one of them, the dock of the River Dock Company, is separately incorporated. With that exception none of them holds itself out as a public dock. Under such conditions we see no reason why the carriers should make any allowance to the private docks or why rates should be published from the rail of the vessel on shipments of ore handled over such docks. It is of course in the interest of the carriers that the ore should move over their own docks, since the cost per ton for overhead expenses and to a certain extent for operating expenses tends to decrease as the tonnage handled over the docks increases; but the right of the shippers or others to operate docks of their own can not be denied, and if they can perform the service at a less cost per ton than the carriers charge, or if they elect to assess a lower charge for the service than the maximum allowed to the carriers, these are matters with which, as the situation is now understood, we are not concerned. The carriers are entitled to a reasonable remuneration for the services they perform, which service in the case of ore handled over private docks begins when the ore is loaded on the cars and accepted for transportation. Any service performed by the private docks in the way of loading, handling, or storing the ore prior to the time of shipment is a matter to be disposed of between the dock and the shipper of the ore. We are of the opinion, therefore, that as to shipments of ore handled over private docks the carriers may properly publish rates applicable from the docks as such and not from the rail of the vessel. To publish and maintain rates applicable from the rail of the vessel on shipments handled over the private docks would apparently make those docks public transportation agencies and put them under the obligation to handle all cargoes offered; and we do not understand any such arrangement is intended either by the private docks or by the carriers.

In view of the fact that at each of the lake ports at which private docks are located the line-haul carriers operate their own docks, and for the reason that none of the private docks are located on the rails of the line-haul carriers, and to reach them involves the use of the tracks and facilities of an intermediate industrial railway, we are of the opinion, and so find, that a reasonable rate on ore from the private docks served by short-line railroads that are entitled to receive allowances will be 4 cents per long ton higher than the line-haul rates herein prescribed to apply on shipments from the railroad docks. In accordance with our findings in the *Industrial Railways Case*, 32 I. C. C., 129, carriers will be required to prepare and submit for our examination and approval a schedule showing the amounts which

they propose to allow the industrial railways out of the rates applicable from private docks.

RATES OVER ROUTES NOT AVAILABLE UNDER PRESENT TARIFFS.

In the original report (p. 220) we indicated our expectation that the rates prescribed would be established over the routes named in Table 5, or over other routes that were equally practicable and advantageous to shippers. Upon the supplemental proceedings the carriers objected to establishing the rates prescribed from Conneaut Harbor through Butler and thence over the Pennsylvania to Avenue-Brackenridge, Leechburg, Avonmore, Vandergrift, Apollo, Kittanning, Verona, Latrobe, Josephine, and Johnstown; and in the tariffs proposed by the carriers no rates over this route are shown. The Bessemer & Lake Erie regards the route as a practicable one and said upon the supplemental proceedings that if rates over it were required by the Commission it would recognize its obligation to join in them. But the other lines do not regard it as practicable, and assert that no ore has ever moved over it nor have such rates ever been published. The Cambria Steel Company, having a plant at Johnstown, asserted upon the supplemental proceedings that carload and less-than-carload rates on certain commodities are in effect in both directions over that route; that the Pennsylvania and the Bessemer & Lake Erie have adequate physical connections with the usual yards and interchange tracks at Butler; and that in the past carload traffic has actually moved from Johnstown to Conneaut Harbor in no small volume. These statements were not controverted by the carriers, and no reason has been disclosed for holding the route to be an impracticable one for the purpose of fixing reasonable rates to Johnstown and the other points just named.

FOURTH SECTION VIOLATIONS.

Certain of the tentative tariffs submitted by the carriers contravene the provisions of the fourth section of the act in that the rates proposed by the Pennsylvania from Cleveland and Ashtabula Harbor to Sharon, Sharpsville, Farrell, and other points in the Shenango Valley in western Pennsylvania over routes passing through Leetonia or New Castle or both are lower than the rates suggested in the original report to the last named points; and also in that the rates proposed by the Pennsylvania from Cleveland, Ashtabula Harbor, and Erie to Neville Island and McKees Rocks are applicable through Allegheny and Pittsburgh, to which points higher rates were suggested. There are perhaps other departures from the fourth section in the proposed tariffs not specifically pointed out during

the supplemental proceedings. We said, however, in our original report, that the carriers, if they so desired, might meet the rates named therein over routes other than those specifically set out in Table 5 (pp. 216–219). The proposed tariffs, so far as they involve fourth section departures, are hereby approved and an appropriate fourth section order will be issued upon formal application therefor.

MISCELLANEOUS TARIFF RULES.

Only one shipper offered objections to the rules proposed in the tentative tariffs governing minimum carload weights, or to the rule applicable to direct ore unloaded upon the dock because of the inability of the carriers to supply cars in which to receive the ore as discharged from vessel. The latter rule as proposed is the same, or practically the same, as the present rule, and no reason has been shown for modifying it. The only objection made to the rule making the minimum weight the marked capacity of the car was with respect to its application to the last car of a cargo and to the last car when ore is shipped from storage. No definite finding on this point was made in the original report because there was no basis of record for a finding. The minimum weight rule itself appears to be reasonable, and as to its application to the last car from a cargo or stock pile we suggest that a minimum weight of 30 long tons be fixed, to be subject, however, to further consideration by the Commission in case this adjustment is found not to work out satisfactorily.

After a full reexamination of the original record and of the statements and argument made upon supplemental proceedings, we see no reason for modifying the findings announced in the original report except in the particulars hereinbefore indicated. An order will therefore be issued giving effect to such findings.

Investigation and Suspension Docket No. 900.

SOUTHWESTERN DAIRY PRODUCTS.

Submitted February 8, 1917. Decided April 19, 1917.

Proposed increased rates on butter, butterine, eggs, and dressed poultry in carloads from points in the states of Oklahoma, Arkansas, Texas, and Louisiana to points in western trunk line territory, and to St. Louis, Mo., Chicago, Ill., Memphis, Tenn., and other gateways, on traffic to points in central freight association, trunk line, and southeastern territories found not justified.

Thomas Bond, *F. R. Dalzell*, *B. F. E. Marsh*, *R. D. Williams*, *J. C. Gutsch*, and *W. S. Cornwell* for respondents.

R. D. Rynder, *W. V. Hardie*, *H. D. Driscoll*, *A. C. Johnson*, *J. E. Noon*, *B. W. Redfearn*, *H. L. Bennett*, *Grant Thornburgh*, *J. H. Johnston*, *Ed. P. Byars*, *H. K. Crafts*, *W. M. Manker*, and *John R. Baker* for protestants.

Report of the Commission.

McChord, *Commissioner:*

In the schedules here under consideration, which by appropriate orders have been suspended until June 18, 1917, the respondents propose to increase rates on dairy products, including butter, butterine, eggs, and dressed poultry, in carloads, from producing points in the states of Arkansas, Oklahoma, Texas, and Louisiana to points in western trunk line territory and to St. Louis, Mo., Chicago, Ill., and Memphis, Tenn., and other gateways on traffic to points in central freight association, trunk line, and southeastern territories.

The articles above named are classified third class in the western classification, but for many years, at least since 1906, they have been transported from the points of origin to the points of destination involved under commodity rates less than the class rates. The suspended schedules provide generally for the cancellation of existing carload commodity rates, and for the future application of third-class rates. In view of the large number of points of origin and destination it is practicable to deal only with typical or illustrative points and rates. Rates are stated in cents per 100 pounds, except where otherwise specified.

The following table shows the present and suspended rates on butter and eggs to St. Louis from representative points in Oklahoma, the distance in miles, and the amount of the proposed increase:

From—	Distance.	Present rate.	Proposed rate.	Increase.
Altus	687	75	104	29
Elk City	742	75	104	29
Clinton	640	75	104	29
Enid	545	75	93	18
Chickasha	581	75	97	22
Oklahoma City	543	75	97	22
Muskogee	457	65	80	15

The present and suspended rates on butter and eggs to Peoria, Ill., are 5 cents higher and to Chicago 10 cents higher than to St. Louis. On shipments to the western termini of the eastern trunk lines proportional rates are published to St. Louis and Mississippi River crossings one-half cent less than the rates to these gateways proper, and to points east of the western termini of the eastern trunk lines proportional rates are published to St. Louis 1.6 cents less than to St. Louis proper.

The following table shows the present and suspended rates on dressed poultry from points in Oklahoma to St. Louis and the amount of the proposed increase:

From—	Present rate.	Proposed rate.	Increase.
Altus	90	104	14
Elk City	90	104	14
Clinton	90	104	14
Enid	78	93	15
Chickasha	82	97	15
Oklahoma City	82	97	15
Muskogee	65	80	15

The present and suspended rates on dressed poultry to Peoria are 5 cents higher and to Chicago 10 cents higher than to St. Louis. On shipments to the western termini of the trunk lines proportional rates are published to St. Louis 2 cents lower than to St. Louis proper, and to points east of the western termini of the trunk lines 3.4 cents less than to St. Louis.

The following table shows the present and proposed rates on butter, eggs, and dressed poultry, with commodity description, from representative points in Arkansas to St. Louis, Kansas City, Mo., and Memphis:

From—	Commodity description.	To St. Louis, Mo. Present.	To St. Louis, Mo. Proposed.	To Kansas City, Mo. Present.	To Kansas City, Mo. Proposed.	To Memphis, Tenn. Present.	To Memphis, Tenn. Proposed.
Fayetteville	A	45	68	30	55	45	68
Do	E	55	[1] 104 [2] 84				
Do	F	42½	68				
Do	G	44	68				
Do	H	43½	68				
Van Buren Fort Smith	A	50	75	45	65	50	65
Do	E					55	[1] 100 [2] 85
Dardanelle	C	48	78	48	77	38	64
Do	D	68	78				
Jonesboro	B	60	81			40	52
Little Rock	A	45	65				
Do	B	60	100			40	70
Do	C					30	45
Prescott	C	80	96	80	104		

EXPLANATION OF DESCRIPTION.

A—Butter, eggs, and dressed poultry, straight or mixed carload, minimum weight 20,000 pounds.
B—Dressed poultry, carload, minimum weight 10,000 pounds.
C—Eggs, straight carload, minimum weight 20,000 pounds.
D—Dressed poultry, carload, minimum weight 20,000 pounds.
E—Butter, eggs, and dressed poultry, straight or mixed carload, minimum weight 10,000 pounds.
F—Dressed poultry, carload, minimum weight 20,000 pounds, when for points east of the western termini.
G—Butter and eggs, straight or mixed carload, minimum weight 20,000 pounds, when for points east of the western termini.
H—Dressed poultry, carload, 20,000 pounds, when for western termini.

[1] Dressed poultry. [2] Butter and eggs.

The following table shows the present and suspended rates on dairy products from Texas points to various destinations, with minima and commodity descriptions:

To—	From Texas common points. Present rates.	From Texas common points. Suspended rates.	From Houston and Galveston. Present rates.	From Houston and Galveston. Suspended rates.
St. Louis:				
1	88	104	88	104
2	97	104	97	104
3	80	104	80	104
Kansas City:				
1	88	104	88	104
2	[1] 97	[1] 104	97	104
3	80	104	80	104
Chicago:				
1	100	116	100	116
2	105	116	105	116
3	92	116	92	116
New Orleans:				
1	[2] 78	94	[3] 45	[3] 45
2	94	94	67	67
3	55	94	67	67

1. Butter and butterine, 20,000 pounds.
2. Butter, butterine, dressed poultry, and rabbits and eggs, mixed carload, 20,000 pounds.
3. Eggs packed as per western classification, 20,000 pounds.

[1] From Fort Worth-Dallas group, 96. [2] Butter only. [3] Butterine only; butter, 67.

The following table shows the present and proposed rates from Texas common points to New Orleans:

	Present rate.	Proposed rate.	Increase.
Butter, straight carloads	75	94	19
Butter and eggs, mixed carloads	94	94	....
Eggs, straight carloads	75	94	19

It is not proposed to increase the rates from Houston to New Orleans on these articles. Respondents give no reason for their action with respect to rates from Houston.

The protestants show that from Texas common-point territory existing rates to eastern consuming markets are about the same with respect to each article involved. Under the proposed adjustment Texas common point territory is divided into 36 groups. The following table shows the present and proposed rates in dollars per 100 pounds from various points in Texas to various destinations:

	Eggs, minimum 30,000 pounds.		Butter, minimum 20,000 pounds.		Dressed poultry, minimum 20,000 pounds.		Mixed butter, eggs, and poultry, minimum 20,000 pounds.	
	Present.	Proposed.	Present.	Proposed.	Present.	Proposed.	Present.	Proposed.
New York:								
[illegible]	1.30	1.60	1.43	1.60	1.43	1.55	1.43	1.60
[illegible]	1.30	1.42	1.33	1.42	1.43	1.28	1.43	1.42
Boston:								
[illegible]	1.[illegible]	1.75	1.53	1.75	1.53	1.55	1.53	1.75
[illegible]	1.[illegible]	1.48	1.39	1.48	1.53	1.28	1.53	1.48
[illegible]								
[illegible]	1.30	1.60	1.43	1.60	1.43	1.53	1.43	....
[illegible]	1.30	1.42	1.33	1.42	1.43	1.26	1.43	....
[illegible]								
[illegible]	1.[illegible]	1.84	1.27½	1.84	1.27½	2.04	1.27½	2.04
[illegible]	1.[illegible]	1.57	1.27½	1.57	1.27½	1.77	1.27½	1.77
[illegible]								
[illegible]	1.[illegible]	1.84	1.27½	1.84	1.27½	2.04	1.27½	2.04
[illegible]	1.[illegible]	1.57	1.27½	1.57	1.27½	1.77	1.27½	1.77
[illegible]								
[illegible]	1.[illegible]	1.[illegible]	....	1.84	1.31½	2.04	....	[2] 1.84
[illegible]	1.[illegible]	1.[illegible]	....	1.57	1.31½	1.77	....	[2] 1.57
[illegible]								
[illegible]		1.[illegible]	....	1.60	1.58	1.79	....	1.79
[illegible]		1.[illegible]	....	1.43	....	1.52	....	1.52

[illegible] San Antonio, etc.
[illegible]

[illegible] [2] Between butter, and eggs only.

[illegible] increases, such as increases in the [illegible] to New Orleans from Oklahoma points. [illegible] not in detail.

In [illegible] Territory, 32 I. C. C., [illegible] had justified an increase [illegible] I. C. C.

in rates on live poultry in carloads from the fourth to the third class basis. Respondents refer to that case and assert that rates on dressed poultry should be harmonized with the rates on live poultry. Schedules were filed which proposed to increase rates on dressed poultry, butter, and eggs to third class from points in western trunk line territory to the Mississippi River and beyond. The proposed increased rates were suspended. Investigation and Suspension Docket No. 880, *Western Trunk Line Rate Increases*, 43 I. C. C., 700. Thereafter the schedules here under suspension were filed.

The respondents also contend that circumstances and conditions attendant upon transportation of dairy products justify the establishment and maintenance of third-class rates. The special conditions are stated as follows: First, the perishable nature of the commodities in question; second, the resulting loss and damage claim payments; third, the necessity for expedited service; fourth, the high value of the commodities; fifth, the excess weight of refrigerator cars as compared with box cars; sixth, the excess empty mileage of refrigerator cars as compared with box cars; seventh, the excess weight of ice, salt, and packing hauled; eighth, the additional mileage and expense through switching to and from ice plants and icing stations; ninth, the greater money investment in refrigerator cars; tenth, the extra labor and expense in cleaning and disinfecting refrigerator cars; eleventh, the restricted loading of refrigerator cars as compared with box cars, including restricted loading space and restricted revenue-producing load. It is further stated that while these articles receive the care, attention, and handling generally accorded perishable freight, no stated refrigeration charge is added to the freight rate. In connection with this statement no evidence of any kind was submitted by respondents to show to what extent special services were rendered with reference to shipments of dairy products. The volume of the movement is not shown, nor any of the other conditions surrounding the transportation and service except that two respondents show empty refrigerator car movement as compared with the empty movement of box cars.

With respect to the stated refrigeration charge on shipments of fresh fruits and vegetables, it is asserted by protestants that the refrigeration charge is not paid to the carriers, but to refrigeration companies; and that though the refrigeration charge may increase the aggregate payment by the shipper, it in no way adds to the revenues of the carriers. It is further shown that shippers clean and disinfect the refrigerator cars.

The respondents have maintained arrangements for many years by which less-than-carload lots of dairy products may be shipped to what are called concentration points, where the products are as-

sorted, treated, cooled, and packed, and then sent forward in carload lots. For a long time the arrangement was that the average carload rate from the points of origin of the less-than-carload shipments to the final destination of the consolidated carload shipment was protected through claim channels, subject to published rules and restrictions, and the collection of 5 cents per 100 pounds as a concentration charge. Carriers in western territory in the year 1915 sought to cancel the arrangement, but the schedules containing the proposed cancellations were suspended. After hearing the proposed cancellations were sustained. *Regulations as to Storage of Dairy Products*, 35 I. C. C., 469. Soon thereafter some of the respondents published concentration arrangements on a new basis. This basis was the publication of a scale of less-than-carload commodity rates applicable to shipments to concentration points. The through rates to destinations are made up of the local rates into the concentration point plus the carload rate therefrom. That arrangement resulted in a different through rate to a given destination via each concentration point. It was stated by respondents that carriers and shippers were dissatisfied with this condition and have agreed that the old concentration arrangements should be restored, with certain changes not necessary to be considered here. Respondents urge that the concentration arrangement that is to be established and that has been maintained for many years should be taken into consideration as one of the elements which go to make existing rates on dairy products unduly low.

With reference to this a traffic representative of Oklahoma shippers testified that—

> The protestants contend that the carriers are now proposing a cancellation of the mileage less-than-carload rates because it has been discovered that even the present carload rates from Oklahoma are much higher than the less-than-carload rates for the same distances. The carriers can not be sincere, however, in claiming that they consider both less-than-carload concentrating rates and the carload rates to be unremunerative, because, as a matter of fact, the old system of concentration which they propose to reestablish actually produces less revenue to the carrier than the existing mileage system. The Oklahoma shippers do not consider the concentration in either form desirable and do not wish the Commission to consider that as a concession to offset advances in outbound carload rates. We say that because the net result of the concentration arrangements is to allow our strong competitors from Kansas and on the Mississippi and Missouri rivers to draw away the produce tributary to the Oklahoma dealers, destroying our advantages of location with proximity to the producing territory in Oklahoma. We can not in turn draw away the produce from Kansas and Missouri tributary to our competitors there because of the method of concentration applied.

A representative of Texas shippers shows that but little tonnage of dairy products in Texas moves to concentration points by freight,

and therefore contends that concentration rates are not to be considered as a concession to shippers of that state.

The respondents show that the production of butter, eggs, and poultry in the territory involved has increased greatly in recent years and that there has been a great increase in their values. The greater values, it is insisted by respondents, warrant higher charges for transportation.

The protestants show that on actual shipments of poultry from Enid, Okla., to Chicago the increases proposed would range from $30.47 to $49.70 per car, dependent on the load; to western termini points of the eastern trunk lines, from $34.32 to $50.28 per car; and to points east of the termini points, from $36.40 to $53.38 per car.

With respect to the proposed increased rates from Arkansas points to St. Louis, Kansas City, and Memphis it is stated by respondents that they are higher than those proposed from points in other states because originally the Arkansas rates were established on a lower level. No comparative figures were presented by respondents with reference to rates from Arkansas points.

Exhibits were filed by respondents comparing the rates and earnings on dairy products moving from the points of origin here involved to Kansas City, St. Louis, and Chicago with rates on various commodities moving in box cars in the opposite direction.

Protestants contend that not an exhibit submitted by respondents makes comparisons of the present or proposed rates on dairy products with other articles moving in refrigerator cars and receiving similar transportation service.

The witness for the Chicago, Rock Island & Pacific submitted a statement showing loss and damage claims on dairy products and other articles on the system for the year ended June 30, 1915. This statement shows that for the year this carrier paid out 6.7 per cent of its earnings received from eggs, poultry, and dairy products transported. On dressed meats the loss and damage claim payments were 2.52 per cent of its earnings; on packing-house products, except hides and fertilizer, 1.82 per cent; on live stock, 6.86 per cent; and on all freight, 2.72 per cent. On the line of the Atchison, Topeka & Santa Fe proper the loss and damage claims on butter, eggs, and poultry are shown to be about 1 per cent of the receipts from that traffic.

The protestants point out that the loss and damage claims on the Chicago, Rock Island & Pacific include loss and damage from shipments of live poultry. It is contended by them that the showing made by that carrier is not representative. Various witnesses for protestants testified that loss and damage claims upon butter, eggs.

and dressed poultry were comparatively small, in most instances cited being less than 1 per cent of the freight charges paid.

Protestants show that the dairy products business is a growing and important industry in these states, and that the traffic under present rates is rapidly increasing, and contend that the increased traffic would justify a reduction rather than an increase of rates established many years ago when the volume of business was not so great.

The protestants further contend that putting butter, eggs, and poultry on the third-class basis from the points of origin involved will result in unreasonably high rates. While it is admitted that from some points in northern Missouri and in the state of Iowa and other states in that general territory dairy products in carloads move generally under third-class rates, the protestants show that they have not moved for many years from points in the southwest under such rates. It is contended that the conditions in the southwest are entirely different from those that obtain in Missouri, Iowa, and other states. The third-class rates from points in those states are a much lower percentage of the first-class rates than is the case in the southwest. For example, the first-class rate from Kansas City to Chicago is 80 cents. The third-class rate is 45 cents; the third-class rate is therefore 56 per cent of the first-class rate. The first-class rate from Oklahoma City to St. Louis is $1.30. The third-class rate is 97 cents. The third-class rate is therefore 75 per cent of the first-class rate. The following table gives a comparison of third-class rates to the Mississippi River from various points in Oklahoma with third-class rates for equal distances from points in western trunk line territory to Chicago:

From—	Distance to St. Louis.	Rate.	From—	Distance to Chicago.	Rate.
			Sioux Falls, S. Dak	554	47
Oklahoma City	542	97	Lake Benton, Minn	544	58
			Airlie, Minn	545	50
			Harrisburg, S. Dak	548	47
Enid	545	93	Burbank, S. Dak	547	50
			Flandreau, S. Dak	554	53
			Langford, S. Dak	688	67
us	687	104	Christine, N. Dak	687	77
			Britton, S. Dak	702	69
			Lake Andes, S. Dak	644	71.7
ton	640	104	Fairmount, N. Dak	649	72
			Huron, S. Dak	646	67
			Castlewood, S. Dak	608	60
oodward	604	97	Lake Preston, S. Dak	604	63
			Wheaton, Minn	630	70
			Sheldon, Iowa	492	45
Guthrie	491	97	Wabasso, Minn	491	48
			Moville, Iowa	491	45

It is to be observed in connection with this table that the present rate on butter and eggs to St. Louis from all points in Oklahoma is

75 cents, and higher than corresponding class rates from the points above named to Chicago; and the existing rates from the Oklahoma points on dressed poultry are higher than the rates on butter and eggs.

It is further contended by protestants that third class is primarily for less-than-carload shipments throughout the southwest, and that such rates, adjusted to meet varying competitive conditions attendant on less-than-carload merchandise, are wholly improper for transportation of carloads of dairy products; that respondents have recognized conditions by the establishment and maintenance of commodity rates upon practically all articles moving in any considerable volume from and to points in the southwest. It appears that up to 1906 the carriers published the first four classes as "merchandise" or "less carload rates," and it is contended that to now make such rates applicable on carload shipments of dairy products would be to impose unreasonably high charges on the shipper.

The protestants show that there are numerous commodity rates maintained by respondents in western territory on butter and eggs that are lower than third-class rates, which it is not proposed to increase. Among such rates are the following:

From—	To—	Commodity rate.	Third-class rate.
Butter:			
Leavenworth, Kans	Kansas City	10	13
St. Joseph, Mo	....do	10	17
Do	Leavenworth	10	15
Kansas City	Texas common points	83	104
Do	Dallas-Fort Worth group	83	96
Butter and eggs:			
Topeka, Kans	Cairo, Ill	50	64
Mitchell, S. Dak	Chicago, Ill	55	67

From points in Kansas, Nebraska, and from Kansas City and other points, commodity rates on eggs are published to points in Texas. Carriers sought to increase the rates 3 cents per 100 pounds in the year 1914. The schedules proposing the increases were suspended and the increased rates were found not justified. *1915 Western Rate Advance Case—Part II*, 37 I. C. C., 114, 135. The rates on eggs to Texas points from the territory mentioned, it is shown by respondents, are substantially the same per cent of the third-class rates as those now in effect to St. Louis and Chicago from Oklahoma and other points.

There was very little evidence submitted with respect to rates on fresh meats. It is pointed out on brief that there is only one factor which would justify any difference in rates on dressed poultry and on fresh meat, and that is the difference in the volume of the traffic,

which is in favor of the fresh meats. From Oklahoma points to the eastern markets rates on dressed poultry are almost twice as high as on fresh meat, although both are rated third class in the western classification.

Evidence was introduced in this record with reference to rates on live poultry as compared with dressed poultry. The protestants contend that rates on dressed poultry should be lower than on live poultry, considering all the conditions of transportation. Rates on live poultry between points in the western territory are before the Commission in Docket No. 8579, *Live Poultry and Dairy Shippers' Traffic Association* v. *Atchison, Topeka & Santa Fe Railway Company et al.*, which case has been heard and submitted. The relationship between rates on live and dressed poultry is not here presented for determination, and as the matter of rates on live poultry in this territory is before the Commission in another proceeding involving that issue, that question will not be considered herein.

The following table shows the present and suspended rates on butter, eggs, and poultry to St. Louis and Chicago from seven representative points in Oklahoma, including distances via practicable routes as computed by a traffic representative of Oklahoma shippers, the per ton-mile yield, and the average car-mile revenue:

	Mileage.	Butter and eggs.		Dressed poultry.	
		Rate per 100 pounds.	Ton-mile revenue.	Rate per 100 pounds.	Ton-mile revenue
TO ST. LOUIS.					
Present rates from—		*Cents.*	*Mills.*	*Cents.*	*Mills*
Altus	687	75	21.8	90	26.2
Elk City	742	75	20.2	90	24.3
Clinton	640	75	23.4	90	28.1
Enid	545	75	27.5	78	28.6
Chickasha	581	75	25.8	82	28.2
Oklahoma City	543	75	27.6	82	30.2
Muskogee	457	65	28.4	65	28.4
Average 7 points	599	73	24.4	82	27.7
Average car-mile revenue: Eggs, 26.9 cents;[1] butter, 28.8 cents;[2] poultry, 33.8 cents.[3]					
Suspended rates from—					
Altus	687	104	30.2	104	30.3
Elk City	742	104	28.0	104	28.0
Clinton	640	104	32.5	104	32.5
Enid	545	93	34.1	93	34.1
Chickasha	581	97	33.4	97	33.4
Oklahoma City	543	97	35.7	97	35.7
Muskogee	457	80	35.0	80	35.0
Average 7 points	599	97	32.7	97	32.7
Average car-mile revenue: Eggs, 36.1 cents;[1] butter, 39.8 cent;[2] poultry, 39.1 cents.[3]					

[1] Average ton-mile revenue multiplied by actual average loading, 22,060 pounds.
[2] Average ton-mile revenue multiplied by actual average loading, 23,589 pounds.
[3] Average ton-mile revenue multiplied by actual average loading, 24,369 pounds.

	Mileage.	Butter and eggs.		Dressed poultry.	
		Rate per 100 pounds.	Ton-mile revenue.	Rate per 100 pounds.	Ton-mile revenue.
TO CHICAGO.					
Present rates from—		*Cents.*	*Mills.*	*Cents.*	*Mills.*
Altus	931	85	18.3	100	21.5
Elk City	924	85	18.4	100	21.6
Clinton	920	85	18.5	100	21.7
Enid	777	85	21.9	88	22.7
Chickasha	861	85	19.7	92	21.4
Oklahoma City	785	85	21.7	92	23.4
Muskogee	676	75	22.2	75	22.2
Average 7 points	839	84	20.1	92	22.1
Average car-mile revenue: Eggs, 22.2 cents;[1] butter, 24.5 cents;[2] poultry, 26.1 cents.[3]					
Suspended rates from—					
Altus	931	114	24.5	114	24.5
Elk City	924	114	24.7	114	24.7
Clinton	920	114	24.8	114	24.8
Enid	777	103	26.5	103	26.5
Chickasha	861	107	24.9	107	24.9
Oklahoma City	785	107	27.3	107	27.3
Muskogee	676	90	26.6	90	26.6
Average 7 points	839	107	25.6	107	25.6
Average car-mile revenue: Eggs, 28.2 cents;[1] butter, 31.2 cents;[2] poultry, 30.2 cents.[3]					

[1] Average ton-mile revenue multiplied by actual average loading, 22,060 pounds.
[2] Average ton-mile revenue multiplied by actual average loading, 23,589 pounds.
[3] Average ton-mile revenue multiplied by actual average loading, 24,369 pounds.

The protestants in answer to the assertion of respondents that dairy products are carried on comparatively low minimum weights, show 241 articles in the western classification rated third class, and that out of that number 123 have the same minimum weights as dairy products or lower. It is further shown that the average loading of eggs by one shipper is 21,200 pounds; on dressed poultry, 22,360 pounds; and on butter, 23,587 pounds. Another large shipper shows that the average of 1,316 cars of dairy products was 21,356 pounds, and another shipper shows that the average load of dressed poultry is 24,000 pounds.

Numerous exhibits were filed by protestants showing the rates and yield to and from illustrative points in each of the states involved, but the rates and earnings from Oklahoma points are fairly illustrative of the general situation from all points in the southwest. It is true that the earnings are relatively somewhat greater from the Oklahoma points than from points in Texas, but the rates given are sufficient to indicate the earnings under present rates and those proposed from all the points in controversy.

It is shown that departures from the long-and-short-haul rule of the fourth section of the act now exist with respect to rates on dressed poultry to New York, Philadelphia, and other eastern cities

from Oklahoma City and from points in the state of Oklahoma. The rates from the points in that state are higher than rates from Fort Worth and Dallas, farther distant points, on shipments to the same destinations. The higher rated points in Oklahoma are directly intermediate via the lines of the Atchison, Topeka & Santa Fe, Chicago, Rock Island & Pacific, and Missouri, Kansas & Texas on shipments through St. Louis, Kansas City, or Chicago.

With reference to the rates in the suspended schedules, the discrimination against the intermediate points in Oklahoma is increased. For example, the present rate on dressed poultry, in carloads, from Fort Worth to Boston is $1.53 and from Oklahoma City, $1.768; under the suspended schedules the Fort Worth-Boston rate is $1.55 and the Oklahoma City-Boston rate $1.9118, making an increase in the discrimination against the intermediate points of 12.3 cents. No applications for authority to increase the discrimination against the intermediate points previous to the publication of the schedules in question were filed with the Commission and no such authority has been granted. A traffic representative of Texas shippers asserts that in the proposed adjustment of rates from Texas points, resulting in lower rates from points in southern Texas to the same markets in the east than those proposed from points in central and northern Texas, there would be numerous departures from the long-and-short-haul rule of the fourth section. For example, the proposed rate on dressed poultry from Waco, Tex., to New York is $1.55 and the proposed rate from Houston is $1.28, and the traffic via certain lines moves through Waco from Houston on its way to the destinations.

It is further shown by protestants that in southern classification territory fresh meat and dressed poultry take the same class and commodity rates, and from various points outside the southern classification territory the two articles move upon the same rates into that territory. The rate on fresh meat and dressed poultry in straight or mixed carloads from St. Louis to Birmingham, Ala., is 58 cents; to Atlanta, Ga., and Jacksonville, Fla., 60 cents; from Cincinnati, Ohio, to Atlanta and Jacksonville, 48 cents; from Memphis to Birmingham, 42 cents; and from Memphis to Atlanta and Jacksonville, 44 cents. Fresh meat and dressed poultry may be shipped in straight or mixed carloads from Chicago to New Orleans at a rate of 54 cents and from Chicago to Memphis at a rate of 34 cents. No change is proposed in these rates nor in the classification applicable to these articles in southern classification territory.

In order to place Texas producing points upon a relatively equal basis with the Ohio River cities and Chicago, proportional rates were established from Dallas, Fort Worth, and other points in Texas to

New Orleans, Vicksburg, Miss., and Memphis on dressed poultry, when shipped with fresh meat and packing-house products destined to southeastern and Carolina territories. There is now in effect a commodity rate of 24 cents on dressed poultry when shipped with fresh meat and packing-house products from the Dallas-Fort Worth group to New Orleans, Vicksburg, and Memphis on traffic destined to Carolina territory, which it is proposed by the schedules under suspension to increase to 45 cents. The proportional rate from and to the other points on traffic destined to southeastern territory is 26 cents, which it is proposed to increase to 45 cents. These increases would materially disturb the present relationship in the rates from the Texas points compared with rates from Chicago and the Ohio River cities. The protestants assert that if the proposed increases are allowed to become effective the shipments of dressed poultry from the Texas points will cease and be thrown into the hands of shippers from Chicago and the Ohio River cities. The reason for the proposed change in the adjustment just referred to is not stated by respondents, and no evidence was submitted by them to support the proposed action in this regard.

From a consideration of all the facts and circumstances of record we find that the respondents have failed to justify the proposed increased rates. An appropriate order will issue accordingly.

No. 8599.

HOCKING DOMESTIC COAL COMPANY

v.

KANAWHA & MICHIGAN RAILWAY COMPANY.

Submitted March 20, 1917. Decided April 9, 1917.

The defendant, in order to connect two separated parts of its line, uses a portion of the rails of another carrier, subject to a condition in the trackage agreement that excludes the defendant from serving industries on private sidetracks connected with the leased line. Upon complaint of the operator of a coal mine on such a sidetrack, demanding service at its mine; *Held*, That the defendant, under the restraint of the contract, may lawfully decline to serve it. Complaint dismissed.

Wade H. Ellis, *Edgar Ervin*, and *Challen B. Ellis* for complainant.
Leroy Allebach and *W. N. King* for defendant.

REPORT OF THE COMMISSION.

HARLAN, *Commissioner:*

The substantial question for determination on this record is how far one carrier, operating under a trackage agreement over the rails of another carrier and thus extending its facilities and enlarging its ability to serve patrons on its own line, may, by the terms of the agreement, lawfully limit its general obligations as a common carrier by an undertaking not to serve the shipping public at points along the leased line. The pertinent facts of record out of which the inquiry arises are as follows:

The Kanawha & Michigan Railway Company is now operating a general freight and passenger service between Gauley Bridge, in the state of West Virginia, and Corning, in the state of Ohio. It owns the right of way and rails from Gauley Bridge to Kanauga, a distance of approximately 96 miles; it also owns the right of way and rails from Hobson to Corning, a distance of 57 miles. Intervening between Hobson and Kanauga are 11 miles of track owned by the Hocking Valley Railway Company. Until June 24, 1886, these two disconnected portions of the Kanawha & Michigan's present through route were separately operated by the company then owning them. But under the terms of a contract entered into on that date between the predecessor of the Kanawha & Michigan and the predecessor of the Hocking Valley, the former acquired the right, for a period of 99 years and subject to certain restrictions, to use the rails

of the latter lying between the two sections of track owned by the former; the lease, in fact, covers the 17 miles of Hocking Valley track extending from Gallipolis to Pomeroy, both being Hocking Valley points. Although the Hocking Valley and the Kanawha & Michigan are now operated separately and are entirely independent of one another, the two predecessor companies by which the agreement was executed were at that time under the same general management.

The object of the agreement, as stated on its face, was to enable the Kanawha & Michigan's predecessor "to make a continuous line of railway between the portion of its railroad in Ohio and the portion in West Virginia." Provision was made in the agreement for the use in common by the two predecessor companies of the "main tracks, sidings, passenger and freight stations, Y's, inclines, and other appurtenances, and terminal and station facilities connected therewith." It must be noted, however, that the contract, which for convenience will be referred to hereinafter as if it had been made originally by the Kanawha & Michigan and the Hocking Valley and not by their predecessors, further provided that the Kanawha & Michigan should have no right to accept traffic from or to any station upon the trackage line, except Athens, when originating at or destined to any point reached by the Hocking Valley or its connections. Athens was excepted because, being also on the rails of the Baltimore & Ohio Southwestern, it could be and was in fact then being served by the Kanawha & Michigan in connection with the latter line.

The restrictive clause in the contract led to a misunderstanding between the two companies shortly after the date of the contract and resulted in litigation in the Ohio state courts, in which, on the allegation by the Hocking Valley that the Kanawha & Michigan, in violation of the provision, was accepting traffic from stations along the leased line, a temporary restraining order was entered by the lower court, which was finally made permanent as the result of an unreported decision by the supreme court of the state in *Kanawha & Michigan Ry. Co.* v. *Columbus, Hocking Valley & Toledo Ry. Co.* The latter court apparently affirmed the construction placed by the lower court upon the contract of June 24, 1886, namely, that the Kanawha & Michigan had been given a right to the common use of the—

main line of railroad as then constructed and operated between the cities of Pomeroy and Gallipolis, and all sidings and switches that were then in use along said line for the general purposes of the road, and all that might thereafter be constructed by the plaintiff for the purpose of moving trains and for the common use of the companies. * * * It does not include or grant the

use of private switches and sidings constructed before or after it was entered into, not for the convenience of the two railroads, but for the convenience of shippers.

A private switch, under the agreement in question, had been held by the lower court to be one "built for the use of the individual industry carried on at that point and not to be used for other or general railroad purposes;" and such private switches the Kanawha & Michigan was enjoined from further using.

The case, as before stated, is not reported, but certified copies of the decrees were offered in evidence herein.

Apparently the construction placed upon the contract by the state courts has for many years been accepted without dissent by both parties to the agreement as defining the property and facilities of the Hocking Valley that might be used by the Kanawha & Michigan under the agreement between them of June 24, 1886, and in furtherance of the declared object of that agreement, namely, to enable the Kanawha & Michigan, as hereinbefore explained, "to make a continuous line of railway between" its two disconnected sections of track hereinbefore described. In January, 1900, however, the parties entered into a further agreement by which the limitations of the original contract of 1886, prohibiting the Kanawha & Michigan from taking traffic to and from points along the trackage line, were waived and suspended, and the Kanawha & Michigan during such suspension was given the right "to take freight and passengers to and from all points on said leased line without any restriction whatever." Under the terms of this supplemental agreement the waiver or suspension, as it may be well to note at this point, may be canceled by the Hocking Valley on 30 days' notice to the Kanawha & Michigan; and in such event it is provided that all the conditions and terms of the original contract of 1886 again become effective.

The complainant's interest in these arrangements between the two companies for the joint use of the track in question grows out of the fact that it owns and for some years has operated a coal mine within a short distance from the rails so owned by the Hocking Valley and used by it in common with the Kanawha & Michigan as before explained. To secure an outlet for the product of its mine the complainant has a switch track of its own, 1,600 feet long, leading from its mine to the Hocking Valley's right of way on which the jointly used rails are laid. The switch connection on the right of way was built by the Hocking Valley and is owned by it. The latter line now serves the mine to both state and interstate destinations. The Kanawha & Michigan, however, does not serve the mine as an initial carrier but only as a connection of the Hocking Valley. It explains its abstention from the traffic as an originating carrier by reference to

the terms of the agreement under which it is operating over the rails in question. Its position is, as hereinafter more fully explained, that in addition to its right under the original agreement to operate a through service over the Hocking Valley rails between the two disconnected portions of its own road, it now has the right, under the supplemental agreement, which is revocable, however, at the pleasure of the Hocking Valley, to serve the public along the leased line, but may do so only by using the general facilities of the Hocking Valley covered by the original agreement; and that the supplemental agreement did not extend its rights to any Hocking Valley facilities not embraced in the original agreement, and therefore gave it no right to handle any traffic to or from industries on private switch tracks. This definition of its rights under the two agreements rests upon the ruling of the state court and upon the long acquiescence by both lines in that construction of the agreements between them.

The record discloses that the refusal of the Kanawha & Michigan, on the grounds just stated, to serve the complainant's mine on shipments to points within the state of Ohio, has been before the public utilities commission of that state, by which an order has been entered requiring it to undertake such a service, either over the complainant's switch track hereinbefore described, or over a connection to be built by the Kanawha & Michigan between the complainant's switch track and a drill track built by the Kanawha & Michigan on the Hocking Valley's right of way as hereinafter explained. The state commission also held that the refusal of the Kanawha & Michigan to furnish cars at the complainant's mine was a discrimination against the complainant. The report and order of the state commission, which are now before the Ohio courts for review, seem to be based largely upon a local state statute which the defendant asserts relates to parallel lines and not to such a situation as is here involved. The statute reads as follows:

A company whose road forms part of a line of railway between points common to another line shall not contract or agree with any person, or other railroad company or companies, having a road or line of roads, or forming a part of a line of roads, between the same points, not to carry freight or passengers to or from such common points, nor shall it refuse to receive or carry freight or passengers brought to it to be so carried.

Pending the result of this controversy between it and the complainant in the state courts the Kanawha & Michigan, as an initial carrier, is not accepting shipments from the complainant's mine either to state or to interstate points; and in the petition here before us the complainant asks this Commission by appropriate order to require it to serve the mine as an initial carrier and to furnish cars for the movement of the output of the mine to interstate destinations

and to place the cars for loading over the complainant's switch track hereinbefore mentioned. In asking this relief for the future the complainant also demands reparation for damages alleged to have been suffered by it in the past by reason of the failure of the defendant as an initial carrier to serve its mine to interstate points. The Kanawha & Michigan meets the complainant's contention by pointing to the terms of the contract between itself and the Hocking Valley, under which the main track only of the latter, with the sidings for running purposes, are now or have been used as a joint facility by both roads. It urges that the complainant's switch track and the Hocking Valley's connection therewith constitute a facility that is private in character within the meaning of the agreement and falls within the class of facilities the use of which is not embraced in the rights granted to the Kanawha & Michigan under the contract as construed by the state courts. This was the position assumed by the Hocking Valley in the litigation before the state courts, and since the conclusion of that proceeding the Kanawha & Michigan has made no effort as an initial carrier to serve any industries located on private switch tracks connecting with the trackage line. It is, however, willing to do this if permitted so to do by the Hocking Valley; but the latter company has refused its permission. Under the supplemental agreement of 1900 the Kanawha & Michigan now publishes general class and commodity rates to and from all points on the leased line and actively serves these communities. In doing this, however, it uses only the public team and house tracks of the Hocking Valley and its public freight and passenger stations. It does not use any switch tracks leading to industries. Besides the complainant's mine there are three other mines along the jointly used main line that are reached by switch tracks intended for the special use of the respective mines. In two instances these switch tracks were built by and are owned by the Hocking Valley; in the other case the coal operator owns the switch track up to the Hocking Valley's right of way. There seem also to be two or three other industries that are connected with the leased line by special switch tracks of their own. The record shows very clearly, however, that at no time has the Kanawha & Michigan attempted to serve any of these industries. Under the interpretation placed upon the decisions of the Ohio courts by both the Kanawha & Michigan and the Hocking Valley the former has no right to use such facilities of the latter. And not only has the Hocking Valley refused the use of these private sidetracks to the Kanawha & Michigan, but it has intimated of record its purpose to cancel the supplementary agreement of 1900 in case the Kanawha & Michigan attempts to use them. In that connection it is stated by its officials not only that it desires to

keep that traffic to itself, but also that the complainant's coal, and the output of all other mines and industries along the trackage line having private switch tracks, may be adequately and even more promptly moved to all consuming markets over its own rails than by a 2-line movement over the Kanawha & Michigan's rails. It is not only willing, however, to make joint through rates with the Kanawha & Michigan from the complainant's mine to any Kanawha & Michigan points, but has in fact, upon request, made joint through rates to some of these points. It was also definitely stated of record that its fixed policy is to make joint rates to any other point on the Kanawha & Michigan to which the complainant or any other coal operator on the jointly used main line may wish to ship coal.

It thus appears that the complainant's access to all the coal-consuming markets is not impeded by any practice of these two lines under the contracts in question, and when carefully analyzed it seems quite clear that an important phase of the controversy is the complainant's desire, in times of car shortage, to have an apportionment of the coal-car equipment of each of these carriers. This it contends is its right, and in that connection reference is made to a local rule or statute as hereinbefore stated. The rule itself was not spread of record, nor was its full application explained. With respect to interstate traffic, however, a local regulation of that nature is not controlling; nor would the results flowing from such a practice be just and reasonable if applied to the situation before us as we understand it. In times of car shortage the complainant's mine already gets its apportionment of the Hocking Valley's coal-car equipment; and any order in this proceeding requiring the Kanawha & Michigan also to give that mine an apportionment of its coal-car equipment would seem to give the complainant a decided advantage over the other three coal operators on the trackage line, unless indeed each of the two roads undertook to furnish an apportionment of coal cars to these mines also. In the immediate neighborhood on the Kanawha & Michigan's own rails are other coal operations in active competition with the complainant's mines; and those mines, it seems clear, would be at a distinct disadvantage if the complainant's mine, as the result of this proceeding, were allowed an apportionment of coal cars from both lines.

Upon a careful examination of the whole record we find in it nothing that either requires or justifies any intervention by the Commission in these arrangements between the two lines for the joint use of the track owned by one of them or anything that requires a relief order of the kind demanded by the complainant. Briefly stated, the situation is simply this: One carrier has agreed by contract to put a portion of its rails at the disposition of another carrier under restrictions not unlawful in themselves or so far as the

act that we administer is concerned, and which are not shown to result in any violation of that act or in any real prejudice or disadvantage to the complainant. The record makes it clear that the complainant has full access over the Hocking Valley, as the initial carrier, to all coal markets that could be reached over the Kanawha & Michigan as the initial carrier, and under rates that are not complained of as being either unreasonable or discriminatory. Nor is any complaint made as to the efficiency and promptness of the service of the Hocking Valley. The complainant merely objects to a condition in the contract between the two roads by which one is given a restricted right to use the rails and facilities of the other. Having the full ownership and complete dominion over its right of way, tracks, stations, and other facilities, the Hocking Valley, under the original agreement, as construed by the courts, and under the supplemental agreement, as the two parties to it have for years understood it, has given the Kanawha & Michigan the full use of the whole property except the private switch tracks, and of these the Hocking Valley has reserved an exclusive use to itself. We know of no provision in the act to regulate commerce as amended that would justify this Commission in holding this reservation to be unlawful. If it had been agreed upon by the two lines merely as a device by which to put particular traffic or a particular shipper at an unlawful disadvantage the act would afford relief. But no such conditions are shown here.

Under the reservation by the Hocking Valley of the exclusive use of the private switches the Kanawha & Michigan may be said in effect not to reach the complainant's mine at all. The complainant contends, however, that no such reservation is provided for in the contract between the two lines. But the difficulty with that contention is that the Ohio courts have said otherwise; and the interpretation and enforcement of contracts of this character, involving property rights or the use by one of the property of another, are questions primarily for the courts to resolve and not for this Commission to pass upon. In effect what the complainant is asking us here to do is to review the rulings of the state courts and to make a finding that the contract in question between these two carriers means something other than the state courts have held it to mean and something other than the parties have for years acquiesced in as its meaning. The construction of such contract by a federal court would, almost as a matter of course, be accepted by this Commission as a sufficient guide for its own action when dealing with any matter growing out of the contract that might affect interstate transportation. Whether it is within the powers conferred upon us to disregard the construction of such a contract by a state court is a question that we need not stop here to discuss.

When a court, having jurisdiction of the subject matter, has given a construction to a contract in controversy between the parties before it, this Commission will not ordinarily refuse to accept that construction, even where as an original proposition it might construe the contract differently. We have ample authority, of course, to deal with unlawful practices that result in unjust discrimination or undue prejudice in their effect on interstate traffic or on interstate shippers, and this authority it is our duty to exercise whether the practices grow out of contracts or otherwise. But, as heretofore stated, no showing of any such unlawful results has been made upon this record.

The complainant urges that the purpose of the supplemental agreement of 1900 was to extend to the Kanawha & Michigan the right to use facilities of the Hocking Valley not embraced within the original agreement. But as we read that agreement it purports to do nothing more than to remove the traffic restriction of the original agreement. The supplemental agreement, in other words, seems to open to the Kanawha & Michigan an opportunity to secure additional traffic, but does not seem clearly and necessarily to open to it the use of additional facilities of the Hocking Valley. As before explained the two lines for 16 years have accepted this as the purpose and full scope and effect of the supplemental agreement; and the Hocking Valley, under a definitely reserved power to do so, asserts that it will revoke the agreement altogether if found to have the meaning the complainant assigns to it. But, as we have said, what rights passed to the use of the Kanawha & Michigan under the two agreements, and what rights, if any, have been reserved by the Hocking Valley for its own exclusive use are questions that are now before the Ohio courts, and when finally determined by judicial authority this Commission, so far as we can now see, will have no difficulty in dealing with any discrimination or unlawful practice against the complainant by the Kanawha & Michigan in using or refusing to use facilities that may be found by the court to be lawfully within its control.

Another contention strongly urged by counsel for the complainant is that the reservation by the Hocking Valley to itself of the exclusive use of the private switch tracks hereinbefore mentioned is void and against public policy. Among the authorities cited in support of that view is *Metropolitan Trust Co.* v. *C. & S. H. Ry. Co.*, 95 Fed., 18. That case, however, does not sustain the point made by counsel. On the contrary, the agreement there involved contained a provision similar to the one in the contract here under consideration and it was neither criticized nor disapproved by the court. The provision that was condemned in that case prohibited one of the carriers from extending its own line into a coal

territory already occupied by the other line. It is, of course, the well-settled law that a railroad may not render itself incapable of performing its duties to the public or absolve itself from those obligations without the consent of the state. It will serve no useful purpose, however, to enter upon any discussion of the cases. It will suffice to say that the authorities clearly establish the doctrine that an owning and operating railroad may give trackage rights to another carrier over a part of its line, where such a grant does not impair the performance of its own duties to the public as a common carrier, and, in the absence of a controlling statute, that the owning carrier may, by the terms of the agreement, prohibit the grantee from exercising its functions as a common carrier with respect to traffic upon the line of track so granted. Such provisions do not impair the common-carrier obligations of the grantee on its own line, and the grant may indeed enlarge the ability of the grantee carrier to serve patrons on its own line. The general principles will be found stated at some length in *Union Pacific Ry. Co.* v. *Chicago, etc., Ry. Co.*, 163 U. S., 564, 593, 594, 595. Speaking of a similar limitation in *Alford* v. *C., R. I. & P. Ry. Co.*, 3 I. C. C., 519, 531, this Commission said that the rights of the lessee with respect to the leased line "are not the general rights of a common carrier upon its own road, but are limited and qualified by the agreement. They are simple contract rights which the law does not and can not enlarge."

It follows from what is here said that no question is submitted by the record upon which we may properly base an order for the relief the complainant demands, and its complaint must therefore be dismissed. It will be so ordered.

INVESTIGATION AND SUSPENSION DOCKET No. 982.

LUMBER TO IOWA POINTS.

Submitted March 2, 1917. Decided April 17, 1917.

1. Proposed increased rates on lumber and articles taking same rates from St. Louis, Mo., and grouped points to territory in Missouri and Iowa intermediate to Kansas City, Mo., and Council Bluffs, Iowa, justified.
2. Proposed increased rates on lumber and articles taking lumber rates from Cairo, Ill., St. Louis, Mo., and grouped points to points in southeastern Iowa, not justified.

Thomas R. Farrell and *H. R. Brashear* for Wabash Railway Company.

R. G. Brown for Chicago, Rock Island & Pacific Railway Company and its receiver.

L. C. Mahoney for Chicago, Burlington & Quincy Railroad Company; Quincy, Omaha & Kansas City Railroad Company; and Iowa & St. Louis Railway Company.

Robert W. Hall for Cairo Association of Commerce and Lumbermen's Exchange of St. Louis, Mo.

U. S. Musick for Louisiana Lumber Company.

Ray Williams for Cairo Association of Commerce; Baker-Mills Lumber Company, of Thebes, Ill.; and Main Brothers Box & Lumber Company, of Carnack, Ill.

M. L. Fitzgibbons for Funck Lumber Company, of St. Louis, Mo.

C. W. Craig for Paducah Board of Trade and Metropolis Commercial Club.

M. S. Carter for Cairo Association of Commerce, Vehicle Supply Company, and Cairo lumbermen.

REPORT OF THE COMMISSION.

MEYER, *Commissioner:*

By certain schedules in tariffs, the operation of which has been suspended by orders in this proceeding until July 29, 1917, the respondents propose to increase the rates on lumber and articles taking lumber rates or arbitraries higher than lumber rates from Cairo, Thebes, and East St. Louis, Ill., Evansville, Ind., St. Louis, Mo., Owensboro and Paducah, Ky., and points taking the same rates, to destinations in Missouri and Iowa. The principal protestants against the proposed increased rates are lumber concerns operating at St. Louis and Cairo, although Paducah and Metropolis, Ill., were also represented. Evidence to justify the increased rates

was presented by the Chicago, Burlington & Quincy Railroad, the Chicago, Rock Island & Pacific Railway, and the Wabash Railway, hereinafter called the Burlington, the Rock Island, and the Wabash. Most of the destinations involved are located on these lines. From Cairo, which is representative of points of origin with which it is grouped, increased rates are proposed only to points in southeastern Iowa, including Des Moines and all points intermediate thereto. The principal points, other than Des Moines, are Oskaloosa, Ottumwa, and Albia. From St. Louis and points grouped therewith increased rates are proposed to southeastern Iowa, and also to that portion of northwestern Missouri lying north and northeast of Kansas City and Cameron, to that portion of southwestern Iowa intermediate to but not including Council Bluffs, and points eastwardly thence to Creston. Rates are stated in cents per 100 pounds.

The present and proposed rates to points on the Burlington which may be taken as representative and as indicating the increases proposed to points on other lines are as follows: Present rates 12.5 and proposed 15 cents from Cairo to 63 Iowa towns, including all stations Middletown to Des Moines, Sawyer to Mertensville, Cottonwood to Batavia, and Willit through Sedan to Promise City, inclusive, and involving an average haul of 410 miles; present rates 14 and proposed 15 cents from Cairo to 25 Iowa towns, including all stations from Winfield to Washington and from Winfield through Oskaloosa to Tracy, inclusive, and a few points in southern Iowa, for which the average haul is 422 miles; present rates 13.5 and proposed 15 cents from Cairo to 10 Iowa towns, Bridgeport to Indianola, inclusive, for which the average haul is 465 miles; present rates 12.5 and proposed 14 cents from Cairo to 11 towns surrounding Donnellson, in southeastern Iowa, the average distance to which is 358 miles. The 15-cent rate from Cairo is proposed as a blanket to all destinations in southeastern Iowa, except the few last mentioned.

From St. Louis to points in southeastern Iowa, to which the rates from Cairo are proposed to be increased, the proposed rate is 11.5 cents. The present rates from St. Louis to points in this territory are illustrated by the following: From St. Louis to Ottumwa and Albia, 8.5 cents; to Des Moines, 9.5 cents; and to Corydon, Chariton, and Indianola, 11 cents. It is proposed to increase to 12.5 cents the present rate of 11.5 cents from St. Louis to 110 towns in northwestern Missouri and southwestern Iowa lying between and north of Kansas City and Cameron and south of Malvern and Council Bluffs, to which the average distance from St. Louis is 354 miles. To certain other Iowa towns from Creston through to Villisca; from Diagonal through Clarinda; from Reading to Delphos, and from Bedford to Conway Crossing, Iowa, and also to towns from Gentry, Mo., to Irena, Mo., inclusive, the present rate

is 12 cents and the proposed rate 12.5 cents. To Griswold and Carson, Iowa, the present and proposed rates are 13 cents and 14.5 cents, respectively.

The rates proposed and under suspension are for local movements only and respondents propose to retain the present rates as proportional rates on shipments from beyond the gateways. The present rates now apply both as locals and proportionals.

While the evidence is somewhat extended, the primary and essential facts of record and contentions of the parties may be properly stated within short compass.

For respondents it is testified that the normal basis of rates on all commodities from St. Louis to Des Moines is to observe the St. Louis to Omaha or the St. Louis to St. Paul, Minn., rates as maxima, and to maintain the rates from St. Louis and Kansas City on a parity. The rate on lumber from Kansas City to Des Moines was increased October 1, 1916, from 9.5 to 11.5 cents. The present rate from St. Louis to Des Moines is 9.5 cents. Prior to the *1915 Western Rate Advance Case—Part II*, 37 I. C. C., 114, the rates on lumber from St. Louis to Missouri River crossings were 11.5 cents. In that case we found the carriers there respondent to have justified rates increased by 1 cent on lumber, in carloads, from Chicago, Ill., and St. Louis and common points to Missouri River crossings. Although that decision was rendered in December, 1915, and the increased rates became effective January 20, 1916, the respondents assert that they have been delayed in making adjustments which were consequent upon that decision and that the proposed increased rates to territory intermediate to Des Moines and intermediate to Omaha are an alignment to accord with the increased rates permitted in that decision. The present rates from St. Louis and Kansas City to Omaha are 12.5 cents. However, when the rates under suspension from St. Louis to territory intermediate to Kansas City and Omaha were checked in, the rate from Kansas City and St. Louis to Omaha was 11.5 cents, which is the rate which the respondents propose to establish from St. Louis to Des Moines and intermediate territory. They, therefore, to the extent of 1 cent are not asking for an increase in the rates to the basis which they contend normally should apply. No increased rates are proposed from Cairo to the territory intermediate to Council Bluffs because that adjustment was made in tariffs which became effective February 23, 1915.

The present rate from Cairo to both Ottumwa and Des Moines is 12.5 cents, differentials of 4 and 3 cents, respectively, over the present rates from St. Louis to the same points. In the rates under suspension the respondents propose to split these differentials and establish the rates from Cairo on the basis of 3.5 cents over the rates from

St. Louis to Ottumwa and Des Moines. In the effort to justify this differential it is shown that the rates on numerous commodities from St. Louis to Des Moines, Omaha, and Kansas City are the same and that the differences in rates on the same commodities from Cairo to Des Moines range from 3 to 12 cents. On only one commodity, beer packages, is the differential as low as 3 cents; on the others it is in excess of 5 cents. On cement, which competes with and is a substitute for lumber, the differential is 5½ cents.

Respondents assert that the rates herein involved should be increased, first, because they are not properly aligned; second, the rates from St. Louis to southwestern Iowa and northwestern Missouri should be and should long ago have been on the Missouri River basis; third, the failure to establish rates from St. Louis on that basis has created violations of the fourth section of the act; fourth, the rates from St. Louis to Des Moines and territory intermediate thereto should properly be on the Omaha basis, but, for the reason already stated, respondents are only proposing an increase to 1 cent below that basis.

There are no departures or deviations from the fourth section in the present rates from Cairo to southeastern Iowa which will be cured by the proposed increased rates. The fourth section violations which will be obviated by the proposed adjustment are those which were created following our approval of the increase of 1 cent in the rates on lumber to the Missouri River crossings. The rates to the crossings are in one tariff and were increased in January, 1916; the rates to the local points are in another tariff and were not concurrently increased. The line of the Burlington extends from Kansas City to Council Bluffs and passes through St. Joseph, Mo., to which the rates from St. Louis are 12.5. To reach local points on the Burlington lying south of St. Joseph and north of Kansas City, the transportation from St. Louis is through the higher rated points. The same is true of the Wabash and the Rock Island.

Both respondents and protestants present exhibits of rate comparisons and resulting revenue per ton-mile from which respondents argue that the proposed rates are justified and protestants that they are not justified. On the Wabash the per ton-mile yield of the proposed rates from St. Louis to the territory intermediate to Omaha and Kansas City ranges from 6.1 to 10.6 mills; to Des Moines and intermediate territory from 6.8 mills to Des Moines to 9.4 mills to Moulton, Iowa. The Wabash has the short line and the Rock Island the long line to both territories. Under the proposed rates the per ton-mile yield for the average of the short-line and long-line distances from East St. Louis to junction points of the Rock Island with the Burlington in Missouri and southwestern Iowa range from

6.8 mills for 368 miles to Rushville, Mo., to 8.3 mills for 312 miles to Cameron. From St. Louis to the territory in Iowa to which rates are proposed to be increased to 11.5 cents the average distance is 261 miles, yielding 8.8 mills per ton-mile. To the two points in southwestern Iowa to which the rates are sought to be made 14.5, the average distance is 428 miles, affording 6.7 mills per ton-mile. These per ton-mile earnings are compared with those derived from rates approved by us in various cases which range from 5.9 mills for 425 miles to 9.4 mills for 477 miles.

Protestants submit a summarization of several exhibits of rate comparisons from which the following is gleaned with respect to the rates from Cairo to destinations on the various lines in southeastern Iowa:

From Cairo to points on the—	Revenue per ton-mile.	
	Present.	Proposed.
	Mills.	*Mills.*
Burlington	6.25	7.20
Rock Island	6.05	6.73
Wabash	5.78	6.94
Minneapolis & St. Louis	6.52	7.02
Chicago, Milwaukee & St. Paul	6.49	6.88
Chicago Great Western	5.29	5.99

These per ton-mile earnings are compared with per ton-mile earnings of 4.66 mills derived under the rates from Minneapolis, Minn., to stations in Illinois on the Chicago & Eastern Illinois Railroad; of 5.89 mills under rates from the same point of origin to stations in Illinois on the Illinois Central Railroad; of 5.69 mills under rates from St. Louis to stations in Ohio on the Cleveland, Cincinnati, Chicago & St. Louis Railway; and of 5.57 mills under rates from the same point of origin to stations in Ohio on the Erie Railroad. It will be observed that the present earnings per ton-mile derived from the rates from Cairo to the Iowa territory are higher than the earnings per ton-mile from the other points with which comparison is made and the exhibits show the distances to be substantially alike.

The Cairo and St. Louis protestants are principally interested in the maintenance of the present adjustment in order to preserve those points as lumber assembling and distributing points in competition with the southern lumber milling points. We have had occasion several times to refer to Cairo as a natural gateway and basing point; very recently in *Southeastern Lumber*, 42 I. C. C., 548. The principal concern of Cairo is to have the arrangement continued whereby the rates on lumber from the south to points beyond Cairo are based on the Cairo combination. St. Louis does not desire the present adjustment, under which the combination of rates on St. Louis in many instances exceeds the through rate, to be further

widened. The record abounds with statements of rates from southern producing points to the destination territory here involved, together with the rates to and from Cairo and St. Louis to the same destinations. A few instances to illustrate will suffice: The present rates from points in Mississippi and in Louisiana east of the Mississippi on all lumber, except cottonwood and gum, to the Omaha group, which includes Des Moines, is 26.5 cents. This rate was permitted to be increased from 25 cents in *Lumber Rates from Helena, Ark., and Other Points*, 41 I. C. C., 565. The present rates from the east side territory to Cairo are 15 cents and to St. Louis 19 cents; from Cairo to Des Moines 12.5 and from St. Louis 9.5 cents; resulting in a combination of 27.5 on Cairo and 28.5 cents on St. Louis. The combination of rates on Cairo exceeds the joint through rates by 1 cent and the combination on St. Louis exceeds the joint through rates by 2 cents. The proposed rates will increase the disability of Cairo and St. Louis to the extent of the increases proposed, 2.5 cents in the case of Cairo; 2 cents in the case of St. Louis.

In *Southeastern Lumber, supra*, we referred to the fact that—

> With certain exceptions both the present and proposed rates on lumber are constructed by adding together the established rates to and from the various Ohio River crossings; the rates not so constructed are on a lower basis because of unusual conditions that affect the transportation.

It was also stated in that case:

> The rehandlers and manufacturers of lumber at Cairo and other Ohio River gateways have appeared in support of the increased rates. They state that they were influenced to locate at the gateways by reason of the existence of the present method of basing these rates, which they had every reason to believe would be continued, and that a change would seriously affect them. It is shown that at Cairo alone $8,000,000 is invested in yards for rehandling and plants for manufacturing lumber. The rehandlers carry varied assortments and largely supply emergency needs, and are said to be valuable adjuncts of the smaller mills whose entire output they contract for and distribute.

Testimony to the same effect was reiterated in this case. In the very nature of their business the rehandlers and assorters of lumber at Cairo and St. Louis are not able to avail themselves in many instances of the proportional rates.

From a review of the record we are of the opinion and find that respondents have justified the proposed increased rates from St. Louis and grouped points to the territory intermediate to Kansas City and Council Bluffs, but neither the increased rates proposed from St. Louis nor from Cairo and grouped points, including Paducah and Owensboro, which are differentially higher, to southeastern Iowa have been justified. An appropriate order will require cancellation of the rates found not to have been justified and will vacate the order of suspension with respect to those found to have been justified.

No. 8677.

BOARD OF COMMERCE, LEXINGTON, KY.,

v.

CINCINNATI, NEW ORLEANS & TEXAS PACIFIC RAILWAY COMPANY.

Submitted October 25, 1916. Decided April 24, 1917.

Class and commodity rates between Cincinnati, Ohio, and Lexington, Ky., increased on January 1, 1916, found justified. Complaint dismissed.

J. V. Norman for complainant.

G. M. Freer for Cincinnati Chamber of Commerce, intervener.

W. H. Miller for Indian Refining Company, intervener.

Frank W. Gwathmey and *R. Walton Moore* for defendant and Southern Railway in Kentucky, intervener.

William A. Northcutt and *Edward D. Moore* for Louisville & Nashville Railroad Company, intervener.

Report of the Commission.

Harlan, *Commissioner:*

In the blue-grass section of north central Kentucky there are a number of distributing centers known as central Kentucky junction points, of which Lexington is the largest and most important. These points are all within 15 miles of one another and supply a common territory, which is reached from Louisville by the Louisville & Nashville, the Chesapeake & Ohio, and the Southern railways, and from Cincinnati by the Cincinnati, New Orleans & Texas Pacific and the Louisville & Nashville. Keen competition between those two Ohio River gateways and between those carriers for the trade and traffic of these junction points, and especially for that of Lexington, had, prior to January 1, 1916, depressed the rates to a level below that obtaining generally to many intermediate and contiguous points. This rate condition resulted in some complaints prior to 1912, but during that year and afterwards many of the less favored points appealed to the Commission for relief.

Lebanon complained that its class and commodity rates on interstate traffic from Louisville were unreasonable and unduly prejudicial in favor of Junction City, a point beyond Lebanon on the same line taking lower rates. Springfield, on a branch line and 8 miles nearer to Louisville and Cincinnati than Lebanon, complained

that its class and commodity rates from both gateways were higher than the Lebanon rates. We prescribed lower rates between Louisville and Lebanon; we held that the higher rates between the two gateways and Springfield than between the same gateways and Lebanon were unduly discriminatory against Springfield; and we denied the application of the carriers to continue lower rates between Louisville and Junction City than between Louisville and Lebanon. *Lebanon Commercial Club* v. *L. & N. R. R. Co.*, 25 I. C. C., 277; 35 I. C. C., 204.

Midway complained that its rates on whisky and distillers' dried grain to various interstate destinations and on bottles and boxes from various interstate points of origin were unreasonable and unjustly discriminatory as compared with the rates on the same commodities to and from Lexington and Louisville. We held that by certain specified routes the rates in question were unjustly discriminatory against Midway to the extent that they exceeded the rates to and from Lexington and Louisville, and denied the carriers authority to continue certain departures from the fourth section. *Greenbaum Co.* v. *L. & N. R. R. Co.*, 31 I. C. C., 699.

Shelbyville complained that its class and commodity rates through Louisville to and from interstate points were unreasonable, unjustly discriminatory, and in violation of the fourth section in that they exceeded the rates through Louisville to and from Frankfort, Georgetown, Midway, and Lexington. We found the rates to be unjustly discriminatory, and denied the defendant authority to continue lower rates to and from Georgetown, Midway, and Lexington than to and from Shelbyville. *Shelbyville Business Men's Asso.* v. *L. & N. R. R. Co.*, 37 I. C. C., 675.

As indicated by these cases, departures from the fourth section have caused serious complaint against the adjustment to and from central Kentucky junction points. While this rate condition was not specifically considered in *Fourth Section Violations in the Southeast*, 30 I. C. C., 153, 154; 32 I. C. C., 61, the rules and principles there announced were applicable to it; and the carriers therefore included in the readjustments in the southeast a readjustment of the entire rate structure to and from central Kentucky junction points. This resulted in increases of the class rates between Louisville-Cincinnati and Lexington as follows:

	1	2	3	4	5	6	A	B	C	D	E	H	F	I	L	M	N
Rates made effective Jan. 1, 1916	35	31	26	21	18	16	15	16	12	10	18	21	24	16	16	10	8
Rates in effect prior thereto.	28	25	21	15	13	10	10	13	10	10	13	15	20	10	10	7	6
Increases	7	6	5	6	5	6	5	3	2	0	5	6	4		6	3	2

Increases were also made in the rates on various commodities which will be considered later. The new rates to Lexington and to the other junction points corrected all existing fourth section departures, the rates to many intermediate local points being reduced. Furthermore they brought about a more consistent relationship in the rates to the different junction points themselves, as well as a more consistent relation in the rates to the junction points as compared with the rates to near-by points and to points embraced in and affected by the junction point adjustment as compared with the points just beyond the junction point territory.

In the present proceeding the rates between Cincinnati and Lexington, as local rates, are attacked as unjust and unreasonable to the extent that they exceed the rates in effect prior to January 1, 1916, when the increased rates just described became effective. No attack is made upon these rates as parts of through rates applicable on traffic originating at or destined to points beyond Cincinnati, nor upon the increased through rates made on the Cincinnati or Louisville combination. The complaint was filed by a voluntary association of shippers, engaged in various lines of business at Lexington, against the Cincinnati, New Orleans & Texas Pacific Railway Company. Representing that they were vitally interested in the level of the rates involved, and also in the relationship between the rates from Cincinnati and Louisville to Lexington, the Louisville & Nashville Railroad Company and the Southern Railway Company in Kentucky intervened in opposition to the complaint. The Cincinnati Chamber of Commerce intervened in support of the complaint. The Indian Refining Company also intervened, but when the former rates on asphaltum were restored, its petition was withdrawn. No other central Kentucky point intervened in support of Lexington's complaint or was represented at the hearing.

Lexington is a city of approximately 50,000 inhabitants and is the county seat of Fayette county and the center of a rich agricultural and stock-raising section. It is also an important distributing center for central and eastern Kentucky. It is served by all the carriers hereinbefore referred to, the short-line distance from Cincinnati being 80 miles over the Cincinnati, New Orleans & Texas Pacific and from Louisville 85 miles over the Louisville & Nashville. A brief recital of the nature and causes of the competition which has always existed between Louisville and Cincinnati and the carriers operating to Lexington appears in *Lebanon Commercial Club* v. *L. & N. R. R. Co.*, 35 I. C. C., 204, 209:

As early as 1873 there were three distinct railroad systems in this part of Kentucky: The Kentucky Central, extending south from Covington, through Lexington, to Nicholasville; the Louisville, Cincinnati & Lexington, extending

that its class and commodity rates from bot[illegible]
than the Lebanon rates. We prescrib[illegible]
ville and Lebanon; we held [illegible]
gateways and Springfie[illegible]
anon were undu[illegible]
nied the applic[illegible]
Louisville an[illegible]
Lebanon Co[illegible]
I. C. C., 2[illegible]

Midw[illegible]
grain [illegible]
from [illegible]
jus[illegible]
m[illegible]

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[illegible] to Lexington and Shelbyville; and [illegible] from Louisville, with branches to Bardstown and to Lebanon and Junction City. At that time the Louisville, Cincinnati & Lexington and the Louisville & Nashville were of different gauges, [illegible] at Louisville of all freight from Cincinnati destined [illegible] Louisville had direct connections to the south, but Cincinnati [illegible] this territory except through Louisville. The [illegible] than from Louisville prompted the merchants [illegible] line to the south as a means of enforcing a rate equality between the two points. The construction of the Cincinnati Southern was therefore undertaken in 1873, and was projected southward from Cincinnati and completed as far as Lexington prior to 1877. The new line reduced the distance from Cincinnati to Lexington about 20 per cent, and for this reason the board of trustees of the city of Cincinnati insisted upon a corresponding reduction in the rates between these points. In order to compete with this new carrier the Kentucky Central was obliged to reduce its rates from Cincinnati to Lexington to the level of the rates established by the Cincinnati Southern. The rates of the Cincinnati Southern to Lexington were maximum rates at intermediate points on that line, and because of cross-country competition at intermediate points the Kentucky Central established like rates to opposite stations on its line. This adjustment placed Louisville at a disadvantage as compared with Cincinnati at Lexington and in the surrounding territory, and to overcome this and obtain its share of the traffic the Louisville, Cincinnati & Lexington reduced its rates from Louisville to Lexington, thereby putting Louisville and Cincinnati on an equal rate basis.

The earliest rates between Cincinnati and Lexington of which defendants had any record bear date of October 11, 1875. The subsequent changes in the first five classes, as shown of record, were as follows:

Effective date.	Classification.	1	2	3	4	5	Average.
Oct. 11, 1875	Local classification of Louisville, Cincinnati & Lexington R. R.	37	36	34	27	23	31.2
Sept. 3, 1877	Local classification of Louisville, Cincinnati & Lexington, Kentucky Central, and Cincinnati Southern	31	30	26	23	18	25.6
June 9, 1879	do	29	28	26	20	16	23.8
May 1, 1880	do	28	25	26	18	15	22.4
July 1, 1881	do	28	26	23	18	16	22.6
July 1, 1885	Middle and western states classifications	28	25	21	15	13	20.4
Apr. 1, 1887	Southern Railway & Steamship Association classification	28	25	21	15	12	20.3
Dec. 1, 1897	Southern classification	28	25	21	15	13	20.4
Jan. 1, 1916	do	35	31	26	21	18	26.2

The rates of September 3, 1877, were promulgated by the Cincinnati Southern, now the Cincinnati, New Orleans & Texas Pacific, and averaged about 18 per cent below the rates previously in effect. Three further reductions were made successively on June 9, 1879, May 1, 1880, and July 1, 1885. Prior to the latter date there were only five classes; the sixth class was then added; classes A, B, C, D, E, H, and F were created on April 1, 1887; and classes I, L, M,

and N on December 1, 1897. From time to time commodity rates and exceptions to the classification were also established. For these reasons the reductions on the first five classes, as shown in the above table, do not fully portray the changes that have taken place in the general level of the rates.

In support of the reasonableness of the increases here in issue the defendants introduced a great many comparisons, the principal ones being with (*a*) the rates established by us in *Lebanon Commercial Club* v. *L. & N. R. R. Co.*, 25 I. C. C., 277; (*b*) the maximum rates established by the Kentucky and various other state commissions in the southeast for 80 miles, the Cincinnati-Lexington distance; (*c*) the rates from all Ohio River crossings and from Memphis to points south and east for approximately the Cincinnati-Lexington distance; and (*d*) the rates from important cities in the south to local points on radiating lines for approximately the Cincinnati-Lexington distance.

In *Lebanon Commercial Club* v. *L. & N. R. R. Co.*, 35 I. C. C., 204, we had under review the rates between Louisville and Lebanon, a distance of 67 miles, applicable on interstate traffic originating at or destined to points beyond Louisville. The case was heard and decided prior to January 1, 1916, and while the class rates between Cincinnati-Louisville and Lexington were still on the 28-cent scale. The complainant insisted that the rates between Louisville and Lebanon should be tested by the rates between Louisville-Cincinnati and Lexington and other central Kentucky junction points; the defendants contended that the rates to central Kentucky junction points were depressed, and that the rates for approximately the same distances throughout the south should be used as a criterion in measuring rates between Louisville and Lebanon. We held (id., p. 213) that—

> * * * the adjustment of rates in central Kentucky is the result of competitive conditions which the carriers now operating in that territory have to a certain extent inherited or have been unable to control, and those rates can not fairly be used as the only basis for comparison in determining whether or not rates immediately beyond that territory are reasonable. Since, however, this condition does exist in central Kentucky, we are of the opinion that rates to and from points just without this territory should not be made on an entirely different basis and without any relation to those rates. In other words, if at near-by points these same conditions do not exist the rates to and from those points should be graded up to a basis that will bear a reasonable relationship to the rates to and from points in the so-called low-rated territory.

The rates prescribed between Louisville and Lebanon were fixed with those considerations in view, and they compare with the rates

between Cincinnati and Lexington, complained of here as local rates, as follows:

Between—	Miles.	1	2	3	4	5	6	A	B	C	D
Louisville and Lebanon	67	35	31	27	24	22	20	20	21	14	10
Cincinnati and Lexington	80	35	31	26	21	18	16	15	16	12	10
Differences	13	0	0	1	3	4	4	5	5	2	0

It will be observed that although the distance from Louisville to Lebanon is less than that between the points whose rates are in issue, and the Louisville-Lebanon scale prescribed proportional rates, graded up to bear a reasonable relationship to the depressed rates to and from Lexington and other central Kentucky junctions, the Lebanon scale is higher on all but three classes than the present local rates between Cincinnati and Lexington.

With the exception of the bridge across the Ohio River from Cincinnati, the entire haul involved here is in Kentucky. The rates for 80 miles prescribed by the Kentucky commission for roads like this defendant and by the state commissions of North Carolina, Georgia, and Tennessee are compared below with the rates in issue:

State.	Miles.	1	2	3	4	5	6	A	B	C	D
Kentucky	80	37	32	28	26	23	21	21	22	14	11
North Carolina	80	41	34	30	22	18	15	13	15	13	11
Georgia	80	39	36	31	28	21	16	16	16	10	9½
Tennessee (between stations on Nashville, Chattanooga & St. Louis Ry. west of Nashville)	80	46	40	35	30	26	23	22	25	16	14
Cincinnati-Lexington	80	35	31	26	21	18	16	15	16	12	10

The exhibits from which these comparisons are compiled were offered in evidence by the carriers. Their sufficiency, however, as standards by which to measure the reasonableness of rates for a main-line haul between two cities of approximately 500,000 and 50,000 people is doubtful; for they were prescribed by the respective state commissions as maximum rates and are applicable between all state points whether on main or on branch lines.

In addition to Cincinnati, there are other important Ohio River gateways and commercial centers for traffic to and from the southeast, such as Louisville, Owensboro, Henderson, and Paducah, in the state of Kentucky, Evansville, in Indiana, and Cairo, in Illinois. Memphis, in the state of Tennessee, is an important Mississippi River gateway and commercial center for traffic to and from that territory. The basis of rates between points north and south respectively of the Ohio River is the lowest combination to and from the river cross-

ings. The basis of rates between points in a large territory west of the Mississippi River and points in the territory east of the Mississippi and south of the Ohio is the combination through Memphis or Cairo. The Louisville & Nashville introduced an exhibit comparing the rates in issue with rates from the above-named gateways, and from Nashville and Knoxville, to 179 points from 80 to 99 miles distant on radiating lines. These distances were taken because Lexington is 80 and 99 miles from Cincinnati over the lines of the defendant and by way of the Louisville & Nashville, respectively. A composite of this exhibit is shown below:

	1	2	3	4	5	6
Average of rates from Ohio and Mississippi river crossings, and from Nashville and Knoxville, to 179 points 80 to 99 miles south and east thereof	47.8	41.4	36.2	31.6	27.6	24.6
Cincinnati-Louisville to Lexington	35	31	26	21	18	16
Differences	12.8	10.4	10.2	10.6	9.6	8.6
Per cent	26.7	25.1	28.2	33.5	34.8	34.9

Exhibits were introduced comparing the increased commodity rates between Cincinnati-Louisville and Lexington and the rates from all the Ohio River crossings and from Memphis, Nashville, and Knoxville to the same points. While approximately 75 commodity rates are involved in this proceeding, comparisons are shown below on the principal 18 commodities, which are: (1) Agricultural implements; (2) barrels, half barrels, and kegs, wooden, tight cooperage, not including apple, flour, sugar, fruit, or vegetable barrels or empty ale or beer packages; (3) beans, dried, edible, other than soja or velvet, in packages or in bulk; (4) canned fish, including shellfish, canned pork and beans, fruits and vegetables, straight or mixed carloads; (5) cement, natural or portland, in cloth or paper bags or in barrels; (6) fruits and vegetables, viz, apples, beets without tops, cabbage, carrots without tops, onions without tops, parsnips without tops, potatoes, turnips without tops, straight or mixed carloads; (7) iron and steel articles, viz, special iron; (8) fencing, woven wire or welded in rolls; (9) molasses and sirup; (10) pipe, earthen or concrete; (11) common salt, in packages, in blocks or in bulk; (12) starch, other than liquid; (13) sugar, beet or cane, in cartons, bags, barrels, boxes or in bulk; (14) wagons, farm or lumber, and carts, coal, dump, farm, or lumber, in straight or mixed carloads; (15) horses and mules, per car; (16) cattle, per car; (17) sheep, single deck, per car; (18) hogs, single deck, per car. Comparisons on these commodities are indicated in the subjoined table.

	1	2	3	4	5	6	7	8	9
Averages of rates from Ohio River crossings, Memphis, Nashville, and Knoxville, to points 80 to 99 miles distant on lines radiating therefrom	19.6	27.4	27.3	25.8	8.6	24.1	13.5	22.9	24
Cincinnati-Louisville to Lexington	12	15	12	12	6	12	10	12	12
Differences	7.6	12.4	15.3	13.8	2.6	12.1	3.5	10.9	12
Per cent	38.8	45.2	56	53.5	30.2	50.2	25.9	47.6	50

	10	11	12	13	14	15	16	17	18
Averages of rates from Ohio River crossings, Memphis, Nashville, and Knoxville, to points 80 to 99 miles distant on lines radiating therefrom	9.9	11.4	24	26	18.7	$28.16	$27.46	$24.77	$28.59
Cincinnati-Louisville to Lexington	6	7	12	11	12	23.00	23.00	20.00	25.00
Differences	3.9	4.4	12	15	6.7	5.16	4.46	4.77	3.59
Per cent	39.4	38.6	50	57.7	35.8	18.3	16.2	19.2	12.5

The showing of the commodities enumerated is typical of other commodities involved upon the record. While no substantial evidence of a similarity in operating and other conditions was presented in support of these comparisons, they are entitled, nevertheless, to great weight as portraying the level of rates between points which stand in the same geographical and rate relation to one another as Cincinnati-Louisville and Lexington.

The carriers introduced numerous exhibits comparing the rates in issue with rates from other important distributing centers in the southern states to points on lines radiating therefrom for approximately the Cincinnati-Lexington distance. It is not necessary to discuss these comparisons in detail, for in *Lebanon Commercial Club* v. *L. & N. R. R. Co.*, 35 I. C. C., 204, 213, we held with respect to rates to Lebanon and Springfield:

> * * * it is not fair to measure the reasonableness of rates to and from those points by the standard of rates from and to other junction points in the southern states, particularly points in states as far removed as Florida, Georgia, South Carolina, and Louisiana;

and, in *Shelbyville Business Men's Asso.* v. *L. & N. R. R. Co.*, *supra* (p. 680):

> From the multitude of rates in this country such tables may easily be prepared, and they are ordinarily not of controlling influence. * * *

The same comment may be made with equal propriety of the comparisons last mentioned.

The complainant contends that—

> the real issue in this case is whether Lexington shall be given rates from and to the Ohio River approximating the rates applicable for approximately the same distances north of the Ohio River, or whether it shall be given rates approximating rates applicable for the same distances in the south.

The present rates between Cincinnati-Louisville and Lexington are considerably lower than the general level of rates for approximately the same distances in the south. The increased Lexington rates on the first six classes are an average of 29.7 per cent less than the general level of rates on those classes from all Ohio River crossings, Memphis, Nashville, and Knoxville, to points in the south 80 to 99 miles therefrom. The increased Lexington rates on the 18 groups of commodities hereinbefore mentioned are an average of 38.3 per cent less than the general level of rates on the same commodities from all Ohio River crossings, Memphis, Nashville, and Knoxville, to the same points. This indicates that the rates in issue are uniformly lower than those applicable for the same distances elsewhere in the south.

While no evidence was submitted by the complainant to support the idea that the rates between Cincinnati and Lexington should be predicated on the scale of rates north of the Ohio River, certain testimony and exhibits, presented by a witness for the Cincinnati Chamber of Commerce, were used as a basis for this contention on the brief and argument. This witness compared the first six class rates attacked with the first six class rates to certain points approximately 80 miles north of Cincinnati and Louisville on radiating lines; the density of traffic on the lines of the defendant and the Louisville & Nashville with that on the lines from Cincinnati and Louisville to the north; and the density of population in the counties along these respective lines for 100 miles; and he reached the conclusion that the differences in the level of the rates were not justified.

The defendants argue that these comparisons are not representative. There are many more classes, commodity rates, and exceptions to the classification between the two Ohio River crossings under discussion and Lexington than between the same crossings and points 80 miles north thereof. The southern classification, which governs south of the Ohio River, results on the whole in more favorable ratings, rules, and regulations than the official classification, which governs north of the Ohio River. Furthermore, the rates for 80 miles north of the Ohio River are part of a general scale of rates throughout central freight association territory, which are commented upon in *The Five Per Cent Case*, 31 I. C. C., 351, 401–404, as being exceptionally low. It is not clear, therefore, that those rates afford a usable standard of reasonableness for rates between Cincinnati-Louisville and Lexington, which are part of the general adjustment throughout the southeast. This same contention was advanced in *Lebanon Commercial Club* v. *L. & N. R. R. Co.*, 25 I. C. C., 277, with respect to the rates to Lebanon and Springfield, and in *Receivers & Shippers Asso.* v. *C., N. O. & T. P. Ry. Co.*, 18 I. C. C., 440,

with respect to the rates to Chattanooga. In both cases we fixed from the Ohio River to the points named rates that are higher than the rates north of the Ohio River for approximately the same distances. The rates here attacked are on a distance basis more nearly on a parity with the rates north of the Ohio River than are the rates to Lebanon, Springfield, and Chattanooga.

Upon all the facts of record, we conclude and find that the rates between Cincinnati-Louisville and Lexington, considered as local rates, have been justified. It follows that the complaint must be dismissed, and it will be so ordered.

No. 9012.

ATLAS PORTLAND CEMENT COMPANY

v.

BOSTON & MAINE RAILROAD.

FOURTH SECTION APPLICATIONS Nos. 1625, 1771, AND 1774.

Submitted January 12, 1917. Decided April 27, 1917.

Troy, N. Y., is virtually a part of the Hudson cement district. The reasonableness *per se* of cement rates from Troy to points on defendant's line in New England can not be determined solely upon comparisons with the rates on comparable commodities. Before this issue is finally passed upon the reasonableness *per se* of the rates from the whole Hudson district should be determined. An order will be entered instituting an investigation into the reasonableness of those rates, and the present proceeding will be consolidated with the investigation and with Docket No. 9544, *Allentown Portland Cement Co.* v. *B. & O. R. R. Co.*, for joint disposition. Fourth section applications denied.

Frank Lyon for complainant.

W. A. Cole and *G. H. Eaton* for defendant.

F. E. Paulson for Lehigh Portland Cement Company, intervener.

REPORT OF THE COMMISSION.

CLEMENTS, *Commissioner:*

The complainant, which manufactures cement at Hudson, N. Y., alleges that the rates on that commodity from Troy, N. Y., to points on the line of the defendant in New England are unjust and unreasonable, in violation of section 1 of the act.

Hudson is 35 miles south of Troy. It is served by the Boston & Albany Railroad and the New York Central Railroad. The latter carrier publishes joint rates from Hudson via Troy to points on defendant's lines in New England. These rates are lower than the rates from Troy, an intermediate point, and certain fourth section applications in which the petitioners seek authority to continue the lower rates from Hudson were set for hearing in connection with this complaint.

The complainant is interested in the rates from Troy because it owns 10 barges, with a capacity of 2,000 barrels each, which it can conveniently employ in moving cement by water from its plant at Hudson to the defendant's rails at Troy. As long as the rates from Hudson are lower than the rates from Troy, it is obviously unprofitable for the complainant to haul its cement by water to Troy. If, on the other hand, the rates from Troy were materially lower than the rates from Hudson, the complainant would find it more profitable to deliver its product to the defendant at Troy than to the New York Central or the Boston & Albany at Hudson. The cost of moving cement by water from Hudson to Troy is approximately 20 cents per ton, or 1 cent per 100 pounds. No cement is produced at Troy.

Prior to June 28, 1916, one of the defendant's tariffs provided commodity rates on mixed carloads of brick (fire and paving), cement, fire clay, conduits, flue lining, pipe (clay, stove, and sewer), and drain tile, minimum weight 30,000 pounds. Cement was included in this list for the purpose of permitting the shipment of such quantities of that commodity as might be required in the construction work in which the other commodities were used. The tariff contained no limitation, however, as to the quantity of cement which might be included in such a mixed carload shipment, and the complainant was able to ship carloads of cement on these commodity rates by placing in the cars a small quantity of the other commodities named in the list. Effective on the date above given, the tariff was modified so as to limit to 8,000 pounds the amount

of cement which could be included in such a mixed carload shipment, and, effective December 20, 1916, cement was stricken from the list entirely.

Hudson is but one of several cement-producing points located in what is known as the Hudson cement district. Other points in that district are Howes Cave, N. Y., located west of Troy on the Delaware & Hudson; Glens Falls, N. Y., located north of Troy on the Delaware & Hudson; and Alsen, N. Y., located south of Troy on the West Shore Railroad. Alsen is located on or near the west bank of the Hudson River, only a short distance from Hudson.

All of the above points in the Hudson district are within a comparatively short distance of Troy. The distance via the Boston & Maine from Troy to Springfield, Mass., a representative destination, is 120 miles. The average of the short-line distances to the same point from Glens Falls, Howes Cave, Hudson, and Alsen is 133.4 miles. The same rates apply from all points in the Hudson district to points on the defendant's lines in New England, and the group adjustment has been maintained for many years. Troy has not been considered a part of the Hudson district because no cement is produced there, and no rates lower than the sixth-class rates are published from that point. The defendant, however, expresses of record its willingness to apply the same rates from Troy as from Hudson and other points in the Hudson district, and for that reason no evidence was introduced in support of the fourth section applications previously referred to.

To Springfield the present rate on cement in carloads from the Hudson district, including Hudson, is 9.2 cents. All rates in this report, unless otherwise specified, are the carload rates in cents per 100 pounds. The rate from Troy is 10 cents, minimum weight 40,000 pounds. The complainant asks the establishment of a rate of 4.7 cents from Troy with a minimum of 50,000 pounds, and the establishment of a separate rate of 3.8 cents with a minimum of 72,000 pounds.

The cement consumed in New England is shipped from three districts, the Hudson district, which has already been described; the Lehigh district, which embraces a number of points in the eastern part of Pennsylvania and in the western part of New Jersey; and the Universal district in western Pennsylvania. Of a total of 203,177 tons of cement delivered by the defendant to consumers on its rails during the period of six months, April to September, 1915, 76,941 tons, or 39 per cent, originated in the Hudson district; 122,747

tons, or 59 per cent, in the Lehigh district; and the balance, 3,489 tons, in the Universal district.

The complainant compares the rates on cement from Troy to the points in question with the rates on other low-grade commodities, such as brick, conduits, building blocks, rough granite, fire clay. and lumber. The comparisons are made for hauls varying in length from 1 mile to 350 miles. The following table compares the rates on cement from Troy with the distance rates on other heavy commodities at present in effect between all stations on the Boston & Maine Railroad, for distances of 100, 200, and 300 miles:

Carload rates on various commodities between stations on the Boston & Maine Railroad, in cents per 100 pounds.

Commodity.	Minimum weight (pounds).	Rate for 100 miles.	Rate for 200 miles.	Rate for 300 miles.
Cement	40,000	9	13	17
Brick	50,000	4.6	6.5	7.7
Conduits	30,000	5.1	7.2	8.5
Brick, paving	40,000	5.5	7.8	9.2
Sewer pipe	20,000	5.5	7.8	9.2
Limestone	40,000	4.6	6.5	7.7
Building blocks	50,000	5	6.6	7.6
Rough granite	50,000	5	6.6	7.6

Like cement, a few of the above commodities, such as brick, building blocks, and granite, are used in the construction of buildings, and these articles may therefore be properly regarded as competitive in some degree.

Most of the above commodities are more valuable than cement, which ranges in value from $4 to $6 per ton. Fire brick and paving brick are worth $10 per ton; conduits, $13.50; and sewer pipe, 24-inch size, $16. Other commodities with which comparisons are made, the rates on which are lower than the rates on cement, are also considerably more valuable than cement. Among these are flue lining, clay stovepipe, fire clay, iron and steel articles, and lumber.

The average loading of cement is considerably in excess of the average loading of the other commodities. These comparisons are shown in the following table, together with the earnings per car-mile which the defendant derives from the transportation of each commodity for distances of 25 miles and 200 miles.

Commodity.	Average loading per car.	Car-mile earnings.	
		For 25 miles.	For 200 miles.
	Pounds.	*Cents.*	*Cents.*
Cement	[1] 68,780	137.6	44.7
Common brick and fire brick	45,000-50,000	[2] 60	[2] 16.3
Conduits and tile	24,000	[3] 39.6	[3] 10.8
Sewer pipe	24,000	34.6	9.36
Limestone	40,000	48	13
Rough granite	50,000	68	16.5
Lumber and other forest products	36,000-40,000	64.8-72	18.45-20.5

[1] This is the actual average weight of all cars shipped by complainant from its plant at Hudson in August, 1916. During the same month the cars shipped from the complainant's plant at Northampton, Pa., was 73,720 pounds.
[2] Based on minimum weight of 50,000 pounds.
[3] Based on minimum weight of 30,000 pounds.

A similar comparison of the revenue per ton-mile which the defendant earns on each of these commodities shows that the earnings on cement are materially in excess of the earnings on the other commodities.

The complainant further shows that the rates on cement published by the Maine Central Railroad are substantially the same as the rates on sewer pipe, fire brick, paving brick, fire clay, flue lining, and drain tile, and that the rates on cement published by the Bangor & Aroostook Railroad are lower than the rates on sewer pipe, and only slightly higher than the rates on fire brick, paving brick, fire clay, flue lining, and drain tile. An examination of the tariffs of the Delaware & Hudson and the New York Central shows that their rates on cement are lower than the rates on the other commodities.

The complainant submits for our consideration two proposed schedules of rates on cement from Troy which it suggests as reasonable, one set to apply in connection with a proposed minimum weight of 50,000 pounds and the other, somewhat lower, in connection with a proposed minimum weight of 72,000 pounds; the complainant's contention being that both sets of rates should be established to encourage the heavier loading of cars. The complainant's method of constructing the rates proposed will be briefly described.

As the basis of its proposed rates the complainant uses a rate which until recently applied on mixed carload shipments of fire brick or paving brick, cement, fire clay, clay conduits, clay flue lining, clay stovepipe, and sewer pipe, for which a minimum weight of 30,000 pounds was provided. The distance from Troy to Springfield is 120 miles. The rate on the commodities above named, in the tariff which provided for the carload mixture, was 5.9 cents. Assuming that a given car contains 30,000 pounds of these commodities, which was

the minimum weight prescribed, and that the tare weight of the car is 36,000 pounds, the combined weight of car and freight is 66,000 pounds. The earning per car-mile on the 30,000 pounds of revenue freight is 14.7 cents, which, divided by the gross weight of 33 tons, gives a revenue of 4.4 mills per ton-mile for the combined weight of the car and the shipment. Assuming that this earning of 4.4 mills is reasonable and that the articles in question are fairly comparable with cement, the complainant ascertains the rate on cement, minimum 50,000 pounds, which will yield that earning. The combined weight of the car and shipment will be 86,000 pounds, or 43 tons. If the earning per ton-mile on the gross weight is 4.4 mills per ton-mile the earning per car-mile, gross, will be 18.9 cents. If this be divided by 25 tons, the weight of the shipment, there is derived a ton-mile earning on cement of 7.5 mills, or 90 cents per ton, equivalent to 4.5 cents per 100 pounds, for the haul of 120 miles from Troy to Springfield, and the complainant therefore suggests 4.5 cents as the proper rate to apply in connection with a proposed minimum weight of 50,000 pounds. By a similar process a rate of 3.8 cents is derived for application in connection with a proposed minimum weight of 72,000 pounds.

The fundamental feature of this proposed plan, of course, is the suggestion that different rates be applied in connection with different minimum weights, in order to induce shippers to load heavily and thus avoid waste in the use of cars. While this object is commendable, we are not convinced that it can be attained only by the method which the complainant suggests. The evidence indicates that cars of cement are now loaded much in excess of the minimum weight of 40,000 pounds; and the waste of car space, so far as cement shipments are concerned, is doubtless small.

Because of the keen competition in the New England markets between the Lehigh district and the Hudson district, the relationship in the rates from the two districts is of great importance to the producers. The Lehigh Portland Cement Company, intervener, which operates plants in the Lehigh district, contends that a reduction of the rates from Troy to the basis sought by the complainant would cause a reduction in the rates from the whole Hudson district, and that the relationship between the rates would thereby be destroyed, to the prejudice of the producers in the Lehigh district. The complainant contends, on the other hand, that the rates to New England from the Lehigh district are much lower than they should

be, and that the relatively heavy movement of cement to New England from the Lehigh district is attributable to that fact. The complaint does not bring in issue the relationship between the Hudson and Lehigh districts. Effective March 17, 1917, there was a readjustment in the rates from the Hudson district to New England destinations, involving both increases and reductions, and on the date stated a complaint was filed in which it is alleged that the rates from the Lehigh district to New England points are unreasonable and that the present adjustment of rates subjects shippers from Lehigh district points to undue prejudice and disadvantage and unduly prefers shippers from points in the Hudson and Universal districts. *Allentown Portland Cement Co.* v. *B. & O. R. R. Co.*, Docket No. 9544.

The complaint challenges only the reasonableness *per se* of the rates from Troy and contends that the unreasonableness of the present rates is demonstrated by comparisons with rates on comparable commodities between the same points of origin and destination.

In considering the reasonableness of rates on a particular commodity, comparisons with rates in effect between the same points on comparable commodities are entitled to considerable weight; but when a complaint challenges the reasonableness of rates on a commodity from only one point and it appears that, because of competitive or other practical trade or transportation considerations, a number of points of origin of the particular commodity are grouped under common rates, and also that there is a relationship in rates between two or more groups, we must give due consideration to other factors than rate comparisons. The grouping of a number of points does not, of course, justify the maintenance of a rate which is unreasonable *per se* from any of such points, but in the absence of a conclusive showing that the rates challenged from a point included in a group are in fact unreasonable it is impracticable to consider the reasonableness of the group rates except as applied from all points in the group. Troy, of course, is not now given the Hudson group rates. The defendant, however, expresses willingness to publish those rates from Troy, and contends that a greater reduction would necessarily lead to a reduction in the rates from the Hudson district. The record is not convincing that the maintenance of the same rates from Troy as from Hudson district points would be unduly prejudicial to complainant; nor would we be warranted in concluding from the evidence now before us that the Hudson district rates in effect on the date of hearing would be unreasonable from Troy.

As stated, the relationship between the Lehigh, Universal, and Hudson districts and the reasonableness of the Lehigh district rates to New England destinations are now before us in Docket No. 9544, *supra.* If the reasonableness *per se* of the rates from the Hudson district as a whole were in issue the whole situation would be before us, and an order will accordingly be entered instituting an investigation into the reasonableness of those rates. The two formal cases will then be consolidated with the proceeding of investigation for joint disposition.

The fourth section applications will be denied.

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INVESTIGATION AND SUSPENSION DOCKET No. 896.

WESTBOUND RAIL-AND-LAKE.

Submitted December 21, 1916. Decided April 24, 1917.

Proposed increased rail-and-lake class and commodity rates from water points served by the Maryland, Delaware & Virginia and Baltimore, Chesapeake & Atlantic railways, and from rail points on the lines of those carriers and on the Long Island Railroad, to western lake and other western destinations, found not justified.

L. U. Blessig for Baltimore, Chesapeake & Atlantic Railway Company.

T. A. McGrath and *W. P. Trickett* for protestant.

J. H. Beek for St. Paul Association of Commerce.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

By schedules, filed to take effect August 1, 1916, respondents proposed to increase their present joint rail-and-lake class and commodity rates from several points on the rail lines of the Maryland, Delaware & Virginia and Baltimore, Chesapeake & Atlantic railways, and from all water points on the west bank of the Chesapeake Bay and rivers tributary thereto, served by steamers of the latter lines, and from several points in New York on the Long Island Railroad, to western lake ports and other western destinations by way of Cleveland, Ohio, and the Great Lakes Transit Corporation; and to establish to the same destination points over the same routes joint water-rail-and-lake rates from water points on the eastern bank of the Chesapeake Bay and rivers tributary thereto, served by steamers of the Maryland, Delaware & Virginia and the Baltimore, Chesapeake & Atlantic railways. Upon protest filed by the Minneapolis Traffic Association, the schedules were suspended until November 29, 1916, and later until May 29, 1917.

The few proposed increases in the rates from the rail points on both the Maryland, Delaware & Virginia and the Baltimore, Chesapeake & Atlantic would contravene the long-and-short-haul rule of the fourth section. Subsequently to the hearing, the Baltimore, Chesapeake & Atlantic advised the Commission that the proposed increases from these rail points were published in error. No justification or explanation is made of the proposed increases from points on the Long Island Railroad.

Rail points and water points, hereinafter mentioned as such, have reference to points on the rail and water divisions, respectively, of the Maryland, Delaware & Virginia and Baltimore, Chesapeake & Atlantic railways, unless otherwise specified. Rates are stated in cents per 100 pounds.

The present rates from the rail points and from the west bank water points to Minneapolis, Minn., in connection with the Great Lakes Transit Corporation, which rates are representative, are the same as the rates from New York, N. Y., to Minneapolis, and are higher than the corresponding Baltimore-Minneapolis rates by the following amounts: 8, 8, 3, 3, 3, and 3 cents, respectively, on the six classes and 3 cents on canned goods in carloads. At present there are no joint rates over respondents' lines from east bank water points. The suspended schedules propose to increase the rates from the west bank water points by the following arbitraries over New York: 4, 4, 3, 3, 3, and 3 cents on the six classes, and to establish a 33-cent rate on canned goods in carloads; and also propose joint through rates from the east bank water points on the same basis as from the west bank points. If permitted to become effective, the proposed rates from the water points will exceed the corresponding Baltimore-Minneapolis rates by the following amounts: 12, 12, 6, 6, 6, and 6 cents on the six classes and 4 cents on canned goods in carloads; and they will also exceed the present rates from points on the rail divisions of the Maryland, Delaware & Virginia and Baltimore, Chesapeake & Atlantic by the following amounts: 4, 4, 3, 3, 3, and 3 cents on the six classes and 1 cent on canned goods in carloads.

The respondents offered no testimony at the hearing.

A letter was presented at the hearing from the general freight agent of the respondent, Baltimore, Chesapeake & Atlantic, by one of its agents stating in effect that the suspended schedules would place the rates from the water points, in connection with the Great Lakes Transit Corporation, on the basis applicable in connection with all other joint routes, and referring to various rates and reports in other proceedings before the Commission. Protestant objected to the admission in evidence of the statements contained in this letter. The agent did not testify or offer himself as a witness, but disclaimed knowledge of the statements made in the letter. The record is therefore without evidence on behalf of the respondents. The law definitely imposes the burden of proof upon the carriers to justify the propriety of the proposed rate increases. We therefore find that the proposed rates under suspension have not been justified, and an order will be entered requiring the cancellation of the suspended tariffs.

No. 8641.

NORTHERN POTATO TRAFFIC ASSOCIATION
v.
CHICAGO & ALTON RAILROAD COMPANY ET AL.

Submitted October 18, 1916. Decided April 27, 1917.

1. Rates for the transportation of potatoes, in carloads, from certain producing points in Wisconsin and Minnesota on the Great Northern, Northern Pacific, and Minneapolis, St. Paul & Sault Ste. Marie railways to certain points in western trunk line territory not shown to be unreasonable.
2. Rental charge of $5 per car per trip on refrigerator or other insulated cars in the movement of potatoes during the winter season, added to the freight rate from and to the points involved, not shown to be unreasonable, but found to be unduly prejudicial and preferential. Said charge when applied during the summer months is a new charge established in April, 1916, and has not been justified.
3. Charges for the carriers' protective service and certain rules and regulations governing the transportation of potatoes, in carloads, from and to points involved not shown to be unreasonable.
4. Tariff provision, which seeks to limit carriers' liability for loss or damage due to cold or heat, not the direct result of the negligence of the carrier, not found to be in violation of the Cummins amendment to section 20 of the act.

O. W. Tong for complainant.

Charles Donnelly for Northern Pacific Railway Company.

Albert H. Lossow for Minneapolis, St. Paul & Sault Ste. Marie Railway Company.

E. A. Donnelly for Chicago, St. Paul, Minneapolis & Omaha Railway Company.

J. F. Finerty for all defendants.

Frank G. Harsh for Chicago Potato Company, intervener.

A. L. Flinn for Minnesota Railroad and Warehouse Commission, intervener.

Report of the Commission.

Clark, *Commissioner:*

Complainant, a voluntary association of potato shippers, by complaint filed February 14, 1916, attacks defendants' rates, rules, regulations, and charges applicable in connection therewith, governing the transportation of potatoes, in carloads, from certain producing points in Minnesota and Wisconsin to Chicago, Savanna, Rockford,

and Peoria, Ill., St. Louis and Kansas City, Mo., Omaha, Nebr., Sioux City, Des Moines, Mason City, and Dubuque, Iowa, and La Crosse, Wis. The points of origin are on the Great Northern Railway, hereinafter called the Great Northern, the Northern Pacific Railway, hereinafter termed the Northern Pacific, and the Minneapolis, St. Paul & Sault Ste. Marie Railway, hereinafter called the Soo line, west of Minneapolis, Minn.

The rates, rules, and regulations are alleged to be unreasonable; a rental charge for the use of refrigerator or insulated cars is assailed as unjustly discriminatory and unduly prejudicial and preferential, and rules and charges relative to protection of shipments from frost are attacked as unlawful. Rates are stated in cents per 100 pounds.

The Chicago Potato Company, a receiver and distributor of potatoes, intervened on behalf of complainant. The Railroad & Warehouse Commission of Minnesota also intervened on behalf of complainant with respect to the alleged discrimination in the charge for rental of refrigerator or other insulated cars, but took no further part in the proceedings.

Defendants contend that the issues presented are *res adjudicata*, having been examined and considered by us in *Protection of Potato Shipments in Winter*, 26 I. C. C., 681, 29 I. C .C., 504; *Rental Charges for Insulated Cars*, 31 I. C. C., 255; *Kansas Wholesale Grocery Co.* v. *A. & W. Ry. Co.*, 32 I. C. C., 139; *Best Co.* v. *G. N. Ry. Co.*, 33 I. C. C., 1; *Miller & Co.* v. *N. P. Ry. Co.*, 34 I. C. C., 154; and *Rules Governing the Transportation of Potatoes in Refrigerator Equipment*, 34 I. C. C., 255. The instant case differs from those heretofore considered mainly in the fact that the reasonableness of the freight rates is attacked. The technical doctrine of *res adjudicata* is not applied by the Commission. More than two years have elapsed since certain of the decisions above referred to were announced.

The potato shipping stations in question lie north, northwest, and northeast of St. Paul, Minn. Representative stations are Sandstone, Milaca, Princeton, and Cambridge, Minn., in the Princeton group on the Great Northern; Barnum and Moose Lake, Minn., in the Rutledge group, and Groningen and North Branch, Minn., in the North Branch group on the Northern Pacific; and Frederic and St. Croix Falls, Wis., in the St. Croix group, and Nye and Joel, Wis., in the Rice Lake group, on the Soo line. Practically all the shipments are billed by the consignors to some destination with instructions to "hold at St. Paul for orders." The movement beyond St. Paul is principally via the Chicago, Burlington & Quincy Railroad, hereinafter called the Burlington.

REASONABLENESS OF RATES.

The average distances to St. Paul from the various groups are St. Croix, 45 miles; North Branch, 52 miles; Princeton, 65 miles; Rice Lake, 70 miles; and Rutledge, 103 miles.

The rates on potatoes have been practically stationary from 1893 to date, but prior to 1906 it was the practice to apply the aggregates of intermediate rates when they were lower than the joint rates.

The minimum weights in connection with the present rates are 36,000 pounds from October 1 to May 31, and 30,000 pounds from June 1 to September 30. The minimum weight on shipments in cars under 31 feet in length, inside measurement, or in cars 36 feet and under in length, outside measurement, when equipped with noncollapsible end ice bunkers, is 30,000 pounds during the entire year. The present minimum weights were established on November 1, 1914, having been increased on that date from 24,000 pounds during the summer months and 30,000 pounds during the winter months. No complaint is made of the present minima except, it is stated, that the higher minimum should apply only from November 1 to May 1, because it is frequently warm in October and May, and it is difficult to ventilate a car when loaded to that minimum.

Rates from representative points in the various groups to the destinations are as follows:

Destinations.	Groups.				
	St. Croix.	North Branch.	Princeton.	Rice Lake.	Rutledge.
	Representative points.				
	Frederic.	North Branch.	Princeton.	Nye.	Willow River.
Chicago	17	17	17	17	20
Rockford	17	17	17	17	20
Savanna	17	17	17	17	20
Mason City	17	17	17	17	20
Dubuque	17	17	17	17	20
La Crosse	17	17	17	17	20
Peoria	19	19	19	19	22
Des Moines	19	19	19	19	22
St. Louis	22	20	20	20	24
Sioux City	22	22	24	24	25
Omaha	24	24	24	24	25
Kansas City	24	24	24	24	25

Using 60 miles as the average distance from the North Branch and Princeton groups to St. Paul, the rate of 17 cents applies for distances ranging from 193 miles to La Crosse to 491 miles to Chicago, the 19-cent rate for 320 miles to Des Moines and 500 miles to

Peoria, the 20-cent rate for 633 miles to St. Louis, the 22-cent rate for 327 miles to Sioux City,[1] and the 24-cent rate for 406 miles to Omaha and 650 miles to Kansas City. The earnings per car-mile, computed on a minimum weight of 36,000 pounds plus the rental charge of $5 per car, range downward from 34.3 cents to La Crosse to 12.16 cents to St. Louis. For the average distance of 400 miles to all the points of destination, the average rate and car-mile earnings are 19.1 and 18.5 cents, respectively. The present earnings on a carload of potatoes, when shipped in a refrigerator or an insulated car, average $74. Prior to November 1, 1914, they averaged $57.50. The increase resulting from the increase in the minimum weight, not including the rental charge, is $11.50.

Complainant compares these earnings per car-mile with the average earnings per car-mile on the Burlington for the year 1914 on fresh meat, beer, butter and cheese, cattle, horses, hay, and all carload freight. On fresh meat hauled an average distance of 311 miles the average car-mile earnings were 8.2 cents, and on all freight, for an average distance of 282 miles, 16.87 cents. The average hauls from the St. Croix and Rice Lake groups to the destinations in question are approximately the same as from the North Branch and Princeton groups, and the average rates and car-mile earnings are not materially different.

The rates in issue are compared with those on the same commodity between points within the states of Minnesota, Illinois, and Nebraska for similar distances. Such rates are lower than those here attacked, but their mere citation is not helpful.

Complainant also compares the average rates from the North Branch, Princeton, St. Croix, and Rice Lake groups with rates on cheese, fresh fish, fresh meats, fresh berries, butter, eggs, and dressed poultry from and to various points for distances of from 100 to 790 miles under minima ranging from 10,000 to 26,000 pounds and yielding car-mile earnings of from 10.49 cents to 25.31 cents. The purpose apparently is to indicate that low rates are made on these high class perishable commodities between other points in western trunk line territory, and that in comparison the rates on potatoes are high. But with varying distances, different minima, and no disclosure of the circumstances and conditions surrounding the transportation of the other commodities these data are not persuasive.

Attention is called to the rates of 18 cents on apples or tomatoes, 23 cents on celery, and 15 cents on green vegetables or sweet potatoes between Chicago and La Crosse, a distance of 298 miles. The minima being lower on all these commodities than on potatoes, the car earnings are lower.

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[1] From the Princeton group the rate is 24 cents.

Comparisons are made with the commodity rates on 18 articles such as agricultural implements, gocarts, hoisting machinery, matches, linseed oil, petroleum and its products, building paper, and furnaces, between Chicago and Duluth, Minn. The percentage relation of these commodity rates to the class rates on the same articles is 76.3 per cent. Potatoes are rated class C in western classification. The class C rate from the Minnesota points of origin to Chicago and Peoria is 19 cents. The commodity rate to Chicago is 17 cents, or 89.5 per cent of the class rate, and the commodity rate to Peoria is the same as the class rate. The record is silent as to the reasons for the establishment of the commodity rates between Chicago and Duluth, or the volume of the movements of the various commodities thereunder. There is no set rule that a commodity rate shall bear a certain relation to the rate applicable to the class to which the commodity belongs.

Defendants compare the rates in issue with those for substantially equal distances from Denver, Colo., to points in Nebraska; from Park City, Utah, to points in Idaho and Oregon; from points in Maine to Boston, Mass., and New York, N. Y.; from Kansas City to points in Oklahoma, and from Lincoln, Nebr., to points in Kansas. The rates between the points in issue are materially lower, but here also there is no showing as to relative circumstances and conditions.

The following statement, compiled from an exhibit filed by defendants, shows in averages from all the points of origin to all the destination points the present rates; the distances; the earnings per ton-mile, in mills; the earnings per gross ton-mile, in mills; the earnings per car-mile, in cents; and the class "C" rates, respectively, under the letters "A" to "F," inclusive:

	A	B	C	D	E	F
Chicago	17	450	7.6	3.3	13.7	19.5
Savanna	17.3	340	9.9	4.2	17.8	19.3
Peoria	19.3	484	8	3.4	14.4	19.7
Omaha	24.7	407	12.1	5.2	21.8	22
St. Louis	21	682	6.6	2.8	11.9	23.1
Sioux City	22.8	328	14.1	6	25.4	22
Des Moines	19.3	321	12	5.1	21.6	21
Mason City	17.3	201	17.2	7.4	31	19
Dubuque	17.3	306	11.2	4.8	20.2	19
Kansas City	23.6	546	3.6	2.7	15.5	25
La Crosse	17.4	193	18	7.7	32.4	18.4

The earnings per gross ton-mile represent the net revenue for the haul of the combined weight of the car and load, based on minimum of 36,000 pounds and the average tare weight of 48,000 pounds for Northern Pacific refrigerator equipment. The new refrigerator cars of that company weigh 50,000 and 52,000 pounds and constitute the bulk of the equipment. No empty haul is considered in the computation.

Defendants also cite the rates on potatoes found reasonable in *Eastern Shore of Virginia Produce Exchange v. R. R. Co.*, 40 I. C. C., 750. The rates from New York, Philadelphia & Norfolk Railroad stations on the eastern shore of Maryland and Virginia to points in Georgia, North Carolina, South Carolina, and Tennessee are much higher than the rates for equal distances from Minnesota points to the destinations here involved.

From the tariffs on file it appears that there are at present in effect two commodity rates from Frederic, St. Croix, and Withrow in the St. Croix group to St. Louis. This should be corrected.

Upon the whole record we are of opinion and find that the rates on potatoes, in carloads, here assailed are not shown to be unreasonable.

THE RENTAL CHARGE.

In *Rental Charges for Insulated Cars, supra*, we held that the then proposed charge of $5 per car per trip for the use of a refrigerator car in the movement of potatoes from points of origin in Minnesota was justified. It was there stated that:

> The burden of this charge is cast on the potato traffic and is justified by the carriers largely on the ground that the rates on this commodity from the Minnesota producing section were made originally on the theory that the traffic would move in box cars, but that in its development it has become a refrigerator car movement.

The record in the instant case shows that potatoes have moved for many years in refrigerator cars when such cars were available, and that the statement that the rates were originally made on the theory that the traffic would move in box cars was erroneous.

It is also stated in the report from which we have quoted that the originating lines hoped that the $5 charge would result in increasing the supply of refrigerator cars furnished by connecting lines. During the year 1913, prior to the initiation of the charge, the Great Northern paid about $140,450 in mileage on private line equipment. In 1915, when the charge was in effect, this amount decreased to $104,260. Similarly such payments by the Northern Pacific decreased approximately $63,000. The Northern Pacific owns more refrigerator cars now than it did when *Rental Charges on Insulated Cars, supra*, was decided; a greater number of its own cars are furnished now than then, and with the $5 charge in force there is less objection to furnishing refrigerator cars for the movement of potatoes.

The report in *Rental Charges on Insulated Cars, supra*, also shows that the $5 charge was assessed when refrigerator cars were used for shipments of potatoes from Michigan and Maine. The evidence here shows that the charge applies in Michigan only on private line cars, and in Maine on interstate shipments only from November 1 to November 15, when artificial heat is not used.

The rental charge applies only on potatoes and vegetables originating in Minnesota on the lines of the Great Northern and Northern Pacific and on the Soo line west of St. Paul. The Soo line does not apply it on potatoes originating in Wisconsin. Effective February 1, 1916, the Soo line, the Chicago, Milwaukee & St. Paul Railway, and the Chicago & North Western Railway companies canceled the charge on Wisconsin traffic. As delivering carriers, they, as well as other defendants herein, participate in the imposition of it from Minnesota. It does not apply locally within Minnesota or Wisconsin. The charge formerly applied from Montana, Washington, and Idaho, but was canceled in 1915 by the Northern Pacific and Great Northern because of similar action by the Oregon Short Line and Oregon-Washington Railroad & Navigation Company consequent upon its elimination by the Southern Pacific Company. The total movement of potatoes via Billings, Mont., and the Northern Pacific from Montana points and Missouri River and Southwestern territories for the year 1915 was 44 carloads. The rental charge does not apply on less-than-carload shipments of potatoes, although a refrigerator car will be furnished for 15,000 pounds to be moved at the less-than-carload rates. On northbound traffic, from Chicago to Minnesota, no such charge is applicable.

Defendants frankly admit that the rental charge formerly existed on the Wisconsin lines; that there has been a discontinuance of it in various parts of the country, and that officials of lines operating in Wisconsin discontinued it because they thought that it was discriminatory. But they contend that the charge when first initiated accrued to the private car owners; that it is still necessary; that it has been considered reasonable by the Commission, and that if it is actually discriminatory the discrimination may be removed by reimposing it in Wisconsin. Defendants cite *North Pacific Fruit Distributors* v. *N. P. Ry. Co.*, 40 I. C. C., 191, in which a car rental charge of $5 per car per trip for the use of a refrigerator or insulated car, when furnished upon shipper's order, in the transportation of deciduous fruit from the northwest during the season when protection from frost may be necessary and when such protection is, by his choice, furnished by the shipper at his own risk, was not found to be unlawful or unjustly discriminatory. The alleged discrimination is different here. Complainants refer to *Olympia Brewing Co.* v. *N. P. Ry. Co.*, 17 I. C. C., 178, in which we held that a rental charge of $5 per car on shipments of beer from Olympia and Seattle, Wash., to points in California, Nevada, and Arizona was unreasonable and unjustly discriminatory, and awarded reparation in the full amount of the rental charge. In that case, however, the carriers did not perform their duty of furnishing equipment through from point

of origin to destination and complainants were without option but to pay the rental charge in order to move their traffic.

In *Rental Charges for Insulated Cars*, *supra*, it was shown that it costs about 50 per cent more to construct a refrigerator car than a box car; that the annual cost of maintenance is about one-third greater, and the average life five years less; and that the weight of a refrigerator car is greatly in excess and the cubical contents less than that of a box car.

In April, 1916, after the complaint in this case was filed, the rental charge was made applicable during the entire year instead of merely during the winter season. Complainant contends that as applicable during the summer months this is a new charge established since January 1, 1910, and that the burden of justifying it is on the defendants. In this we concur, and as defendants have not sought to justify the charge in the summer season we are of the opinion that it has not been justified and must be canceled.

Complainant stresses the fact that the duty rests upon a common carrier to furnish suitable equipment and insists that the refrigerator car is the only appropriate equipment for the carriage of potatoes. But potatoes may be, and are, transported in box and stock cars, and the main purpose in using the refrigerator car is to protect the potatoes. The duty does not rest upon the carrier to furnish special equipment if it does provide some method by which the commodity can be protected from the cold during the winter months. We are not persuaded by the present record that the rental charge during the winter season is shown to be unreasonable.

That the charge is unjustly discriminatory is clear. For example, a shipment from Princeton to St. Paul in a refrigerator car is not assessed a rental charge. If the shipment is reconsigned to a point in Minnesota, Winona, for instance, there is no charge for rental, but if it is reconsigned to La Crosse the rental charge applies, although La Crosse is near Winona. We find, therefore, that this charge constitutes undue preference to intrastate shipments in Minnesota and undue prejudice against interstate shipments; that it is unduly prejudicial against shipments originating on the Soo line in Minnesota in favor of shipments originating on the same line in Wisconsin, and that the defendants that are participants in the imposition of the rental charge from Minnesota while contemporaneously participating in joint rates on potatoes from Wisconsin in connection with which no rental charge is applicable, subject the potato traffic of Minnesota to undue prejudice. The circumstances surrounding the transportation of potatoes from Montana and Minnesota are different and negative the allegation of unjust discrimination.

PROTECTIVE SERVICE.

The charges for the protective service are made with reference to those found reasonable in *Potatoes and other Perishable Freight in Heater Cars*, 25 I. C. C., 159, in which proposed heater charges were found to be just and reasonable. They were expressly approved in *Miller & Co.* v. *N. P. Ry. Co., supra.* The charges from the Princeton and North Branch groups to Sioux City, Des Moines, Mason City, Dubuque, and La Crosse are the same, 5 cents; to the other points of destination, 6 cents. On the 5-cent rate the minimum charges are $18 per car; on the 6-cent rate, $21.60.

The tariff provides under option 1 that the shipper may elect to assume responsibility for the protective service and thereby assume all responsibility for loss or damage due to cold or heat, not the direct result of negligence of the carrier. The prewarming is performed by the shipper, who also furnishes the temporary lining or false flooring, or both, or stoves, for which an allowance will be made for the actual weight, but not to exceed 1,000 pounds, when loaded in insulated cars, or 2,500 pounds when loaded in other than insulated cars. The shippers must furnish the attendants for the fires. Under this option the carrier assumes no responsibility for ventilation of the cars and will not place them in roundhouses or other warming houses.

Under option 2 the cars move under the carriers' protective service, for which the charge is made and the carrier assumes all liability for loss or damage due to cold or heat, not the direct result of the negligence of the shipper. Under this option the following additional charges are collected for the additional protective service:

Charges for protective service are made with the understanding that cars will be loaded immediately after they are placed for loading. If the car has not been loaded and receipted for within 24 hours after the time placed for loading, a charge of $2 per car per 24 hours or fraction thereof will be collected.

While cars are held at intermediate stop points between point of origin and final destination on orders of shipper, owner or consignee, a charge of $2 per car per 24 hours or fraction thereof will be collected covering the entire period cars are so held.

While cars are held at final destination awaiting disposition or unloading a charge of $2 per car per 24 hours or fraction thereof will be collected for the entire time cars are so held; the time to be computed from the expiration of 24 hours after the first 7 a. m. after arrival of car at destination train yard.

In respect of the first paragraph of this rule it is stated that when cars are bunched $2 is an unreasonable charge and that demurrage in addition to the $2 is paid. Paragraph 1, section (b), of rule 8 of the uniform code of demurrage rules, provides:

Cars for loading.—When, by reason of delay or irregularity of the carrier in filling orders, cars are bunched and placed for loading in accumulated numbers

in excess of daily orders, the shipper shall be allowed such free time for loading as he would have been entitled to had the cars been placed for loading as ordered.

On its face the assessment of $2 after 24 hours, in instances which come within the terms of this rule, would appear to be unreasonable, but there is not evidence of record on which we could so find.

The objection to the second paragraph of the rule is that, for example, on a car reconsigned at St. Paul it is alleged that it would move as rapidly if it were consigned through without stoppage at St. Paul. This raises a question which upon the evidence before us can not be determined. Generally speaking, where a car is reconsigned or is held at an intermediate point after a certain stated period such a charge has been held to be reasonable.

In respect of the third paragraph of the rule it is stated that where the shipper furnishes protective service he receives 48 hours free time for unloading car, and the allegation that the $2 charge is unreasonable is based solely on the difference between 48 and 24 hours. This statement is not sufficient upon which to base any conclusion.

The shippers use the carriers' protective service but rarely, because they can perform the service at a less cost. They contend that the rates of transportation, with the additional compensation due to the increase in the minima, are such that the carriers can afford to perform the service without additional charge above the transportation rate.

Complainant also contends that the conditions surrounding the transportation of potatoes from Maine and from Minnesota are dissimilar and that the charges should not, therefore, be on a parity. Certainly the rates are not the same for equal distances. For example, the rates from Caribou or Fort Fairfield, Me., to New York for distances of approximately 640 miles are 32 cents, while from Hinckley, Minn., to St. Louis, a distance of 642 miles, the rate is 20 cents. But competition, train loading, accessibility to large markets and other factors which are determinative of the reasonableness of rates for the transportation of an article are not very pertinent in respect of whether heater car charges are reasonable, as to which the cost of the service plus a reasonable profit is the most important factor. Complainant has merely taken the direct costs of the heater car service. We can not accept the figures submitted by complainant as conclusive. Too many factors are omitted. Nothing is allowed for superintendence, taxes, depreciation, or the loss and damage which the carrier assumes when it performs the service. So long as the carriers' charges are materially in excess of the cost to the shipper, the shipper will exercise the option to perform the service himself. We can not require the charge to be made unduly low in order to prevent

shippers from performing the service themselves. As we stated in *Potatoes and other Perishable Freight in Heater Cars*, *supra*, it would not be just to the shippers of potatoes who do not require this additional service if the railroad rendered it for nothing.

We are of the opinion and find that the charges for the protective service have not been shown to be unreasonable.

RULES AND REGULATIONS.

Item 239 of agent Boyd's tariff I. C. C. No. A-618 provides that where shippers of potatoes, * * * in carloads, have not ordered refrigerator or insulated cars, but have loaded same in stock cars or common box cars with side door or doors fastened open for ventilation, they will be transported solely at owner's risk of loss or damage by heat, cold, pilferage, or leakage, not the direct result of actionable negligence of the carrier. In such cases the carrier will not accept or be governed by any instructions with respect to ventilation.

Complainant contends that under this rule the carriers practically prohibit potato shippers from ordering box cars and force them to order refrigerator cars, for which the rental charge of $5 is made. They object to the potatoes being transported solely at owner's risk when loaded in box cars with the side doors fastened open for ventilation, because, it is stated, it would be impossible to ship potatoes safely without ventilating them in some way. They state that in August, September, and October, when box cars and stock cars are largely used, there is much pilferage. They insist that as no attendants accompany box cars, they should be transported at carriers' liability. This question rather goes to that which will be considered later under the Cummins amendment.

Under paragraph 2 of item 40 of the tariff, it is provided that when car is to move under ventilation the initial carrier will allow shippers the privilege of giving detailed instructions regarding the degree of ventilation, but only at owner's risk of loss or damage by heat or cold, not the direct result of actionable negligence of the carrier, and such instructions must be reasonable and definite. Objection is made to one "sample of a reasonable and definite notation at owner's risk," shown in note B, paragraph 4, of the same item; that is, "Ventilate through one side door at ——," because it makes no provision for ventilating the car en route. It is said to be necessary during certain seasons to cleat open the side doors of refrigerator cars that have no ventilators and to keep them so cleated open through to destination. The evidence in respect to this rule goes no further than the above statement, and on it we are unable to find the provision unreasonable.

We have already referred to the refusal of the carriers in respect to cars moving under option 1, to place them in roundhouses or other warming houses at any point between origin and destination for protection of contents against freezing or chilling or removal of frost from the lading. The evidence goes no further than an objection to this rule.

THE CUMMINS AMENDMENT.

The Cummins amendment became effective June 2, 1915. Under option No. 1 the shipper may elect to furnish the protective service and assume all responsibility for loss or damage due to cold or heat, not the direct result of negligence of the carrier. Complainant contends that the Cummins amendment took from the carrier the right to demand that the shipper assume any responsibility. But the defendants do not make any such demand. They offer to transport the shipments under carrier's full liability, or to permit the shipper to be his own insurer. In *Protection of Potato Shipments in Winter, supra*, we stated in reference to the alternative rule then suggested by the carriers that it was, in our opinion:

> Fair and reasonable, in that it allows the shipper a choice between shipping his traffic at a lower rate under a special contract by which he becomes his own insurer against weather loss or damage or of making his shipments under terms imposing the full responsibility on the carriers.

Rule 9 of the western classification provides that the acceptance and use of the uniform bill of lading is required; that property carried not subject to all the terms and conditions of the uniform bill of lading is to be carried at the carrier's liability, limited only as provided at common law and the laws of the United States and of the several states in so far as they apply, but subject to the terms and conditions of the uniform bill of lading in so far as they are not inconsistent with such common carrier's liability, and that in such instances a rate 10 per cent higher, subject to a minimum increase of 1 cent per 100 pounds, will be charged.

Complainant submits that when, effective January 1, 1914, the carriers published the protective service charges they increased the rates on potatoes because there existed no reason why the potato shipper could not have the benefit of the 10 per cent basis; that is, taking the rate to Chicago as illustrative, under the western classification rule providing for a 10 per cent increase in rates when the uniform bill of lading was not used, the rate would have been 17 cents plus 10 per cent, whereas the heater car charges to Chicago are $21.60 per car. In other words, it is the contention of complainant that defendants increased the charges after January 1, 1910, and the burden of justifying them is upon the carriers. This goes to the question of the reason-

ableness of the heater car charges which has already been considered and ignores the fact that the classification rule contemplated only additional liability and not additional service.

We held in *The Cummins Amendment*, 33 I. C. C., 682, 687:

It is perfectly plain that the purpose of this law is, except as otherwise provided therein, to invalidate all limitations of carrier's liability for loss, damage or injury to property transported caused by the initial carrier or by another carrier to which it may be delivered or which may participate in transporting it.

It was also stated on page 692 that:

There is nothing in the express terms of this act or in the history of this legislation that shows any intent or purpose on the part of Congress to affect in any degree the existing rates charged by carriers for transporting property. The legislation is aimed at specified contracts and declares them to be unlawful. The lawful rates on file at this time, therefore, are the rates providing for the limited liability. The Cummins amendment, by making contracts limiting liability for loss caused by the carriers unlawful, does not destroy these rates, but they remain in effect and are lawfully applicable, for the 10 per cent increased rates are merely additional and can not stand in and of themselves.

In *Miller & Co.*, v. *N. P. Ry. Co.*, *supra*, we said:

It may be here noted, parenthetically, that where the heater service is performed by the shipper and loss or damage results from frost or overheating, not the direct result of negligence by the carrier, such loss or damage is not caused by the carrier. It follows, therefore, that the rule here attacked does not violate the Cummins amendment of March 4, 1915, to section 20 of the act to regulate commerce.

An appropriate order will be entered.

Investigation and Suspension Docket No. 964.

OIL CITY RAIL AND LAKE.

Submitted March 20, 1917. Decided April 27, 1917.

Proposed change in class-rate basis whereby Oil City, Franklin, McClintock, River Ridge, and South Oil City, Pa., are placed on the Baltimore, Md., basis in lieu of the Rochester, N. Y., basis on traffic destined to Lake Michigan and Lake Superior ports and to Minneapolis, Minn., and points taking the same rates, in connection with the Great Lakes Transit Corporation, found not justified. Suspended schedules ordered canceled.

George R. Allen for respondents.

T. A. McGrath and *W. P. Trickett* for Minneapolis Traffic Association, protestant.

J. H. Beek for St. Paul Association of Commerce, protestant.

Report of the Commission.

Clark, *Commissioner:*

The joint through class rates published by the Pennsylvania Railroad from Oil City, Franklin, McClintock, River Ridge, and South Oil City, in northwestern Pennsylvania, to Lake Michigan and Lake Superior ports and to Minneapolis, Minn., and points taking the same rates, in connection with the Great Lakes Transit Corporation, are the same as those which apply from Rochester, N. Y. By schedules, filed to become effective November 15, 1916, respondents propose to place these points on the Baltimore, Md., basis of rates. Upon protest of the Minneapolis Traffic Association they were suspended until September 15, 1917. The St. Paul Association of Commerce entered its appearance at the hearing as a protestant, but took no further part in the proceeding. Rates are stated in cents per 100 pounds.

Oil City may be taken as representative of the points of origin in question. It is about 80 miles south of Erie, Pa., and about 133 miles north of Pittsburgh, Pa. The other points of origin are in the immediate vicinity of Oil City. The rates apply via either Buffalo, N. Y., or Erie, Pa.

At the time of the hearing the class rates to Minneapolis, Minn., a typical destination point, were as follows:

From—	1	2	3	4	5	6
Baltimore	75	64	51	35	29	23
Rochester	65	57	42	29	25	20
Difference	10	7	9	6	4	3

Owing to a general increase in the rail-lake-and-rail rates which became effective on April 9, 1917, the present and proposed class rates to Minneapolis are as follows:

From—	1	2	3	4	5	6
Baltimore	78.8	67.3	53.5	36.8	30.5	24.3
Rochester	67.1	58.1	43.5	30.3	25.6	20.6
Difference	11.7	9.2	10.0	6.5	4.9	3.7

The Rochester rate basis covers a large territory south and east of Buffalo and Erie, extending to Lake Ontario on the north, to Syracuse and Elmira, N. Y., on the east, and to Emporium, Gaines, and the Oil City group on the south. The Baltimore basis extends, with certain exceptions, from Baltimore, Md., to a point just south of the points of origin involved in this case. The suspended schedules may therefore be said to propose the extension of the northern boundary of the Baltimore blanket to include the Oil City group.

Oil City is served by the New York Central Railroad and the Erie Railroad, as well as by the Pennsylvania Railroad. The rates of the first two roads named are now on the Baltimore basis and are not in issue. The Pennsylvania Railroad proposes to increase its rates to the same basis because it fears that the Rochester basis from Oil City endangers the class rates of the Pennsylvania Company in the Canton, Youngstown, and Pittsburgh groups on traffic moving via rail and lake to the same destinations as are here involved, and would eventually threaten its rates from Pittsburgh. The basis for through rates via rail and lake from the three groups just named is the combination of locals on Lake Erie ports subject to Baltimore rates as maxima. The Pennsylvania Railroad has applied the Rochester basis from the Oil City group for seven or eight years. That same basis was observed by the New York Central Railroad until June 5, 1916, since which date it has applied the Baltimore rates. The Erie Railroad, however, has not applied the Rochester basis for at least five years, and for several years it has charged substantially the Baltimore rates.

It will be seen that the Rochester rate blanket as described reaches much farther east from Buffalo into New York state than it does south from Erie into Pennsylvania. The situation east of Buffalo is said to be dominated by the New York Central Railroad, and the Pennsylvania Railroad therefore disclaims responsibility for the lower rates from that section.

It is true that if the present rates of the Pennsylvania Railroad from Oil City are continued, reductions may be made by its com-

petitors which will affect the rates at intermediate points and threaten the rates from Pittsburgh. In *Lake-and-Rail Class Rates from Pennsylvania Points*, 26 I. C. C., 669, we considered similar contentions and denied increases in the Oil City rates substantially similar to those here proposed.

We find that the respondents have not justified the proposed change in the class-rate basis. An order requiring the cancellation of the suspended schedules will be entered.

INVESTIGATION AND SUSPENSION DOCKET No. 986.

COTTON TO NEW ENGLAND POINTS.

Submitted March 16, 1917. Decided May 1, 1917.

Proposed tariff schedules canceling joint rates on cotton and cotton linters, in bales, compressed, from Virginia ports to certain New England and Canadian points, found not justified.

R. Walton Moore for Old Dominion Steamship Company.

REPORT OF THE COMMISSION.

HALL, *Chairman:*

The rates dealt with here are the present and proposed rates on cotton and cotton linters, in bales, compressed, from Norfolk, Va., by water to New York, N. Y., and thence by rail or water to certain northern and eastern destinations. Some of the water carriers participating in the transportation from New York to points beyond are subject to our jurisdiction under the Panama Canal amendment to section 5 of the act. Other water carriers from New York to points beyond are not owned or operated by rail carriers but are subject to our jurisdiction in that they concur in the present joint rates on file with us.

For some years past the all-water and the water-and-rail carriers have maintained joint rates on cotton and cotton linters, in bales, compressed, from Virginia ports, that is to say, from Norfolk, Pinners Point, and Portsmouth, to interior eastern, New England, and Canadian points. These rates are published as applying on the commodities named in carload quantities, and in quantities less than carloads. To many destinations the rates on carloads and on less than carloads are the same and thus apply in any quantity.

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By tariff published to become effective December 21, 1916, the Old Dominion Steamship Company, the initial line, proposes to cancel certain of these joint rates to New England and Canadian points, but not to change or cancel the existing rates to points in the states of New York and New Jersey, and to a few points in the state of Connecticut served by steamer lines which are independent of railway ownership or control. Upon protest filed by Norfolk cotton interests the operation of all schedules contained in the proposed tariff was suspended until October 20, 1917.

Confining our attention to the changes proposed in rates to points in Connecticut served by the rail carriers, or by water carriers owned or operated by them, and to points in Rhode Island, Massachusetts, Vermont, Maine, and Canada, we find that the suspended tariff would cancel all joint rates, leaving in effect the aggregate of rates to and from New York City. This would result in increases in through rates ranging from 2 to 11.5 cents per 100 pounds and in changes from an any-quantity application of those rates to rates 3 cents per 100 pounds higher on less than carloads than on carloads.

No one appeared for protestants.

The respondents offered no evidence to show that the proposed increased rates are just and reasonable. Indeed, it was asserted on behalf of the initial carrier, the only respondent represented at the hearing, that the sole reason for the publication of the proposed cancellation of joint rates was the refusal of the carriers beyond New York to accord it satisfactory divisions of the present joint rates.

The Old Dominion Steamship Company submitted at the hearing an exhibit showing reductions which it desires to make in rates to designated points in Connecticut, Vermont, and Canada if it can arrange satisfactory divisions with its connections. These contemplated reductions are not embraced in the schedules under suspension and can not be considered in this proceeding.

An order will be entered requiring the cancellation of the suspended schedules.

No. 8793.

WEST COAST LUMBERMEN'S ASSOCIATION ET AL.

v.

AHNAPEE & WESTERN RAILWAY COMPANY ET AL.

Submitted December 13, 1916. Decided April 24, 1917.

Rate of 67 cents per 100 pounds for the transportation of cedar shingles in carloads from points in Oregon, Washington, and British Columbia to Chicago, Ill., St. Louis, Mo., and points in Illinois, Indiana, Iowa, Michigan, Missouri, and Wisconsin found to have been and to be unreasonable to the extent it exceeded and exceeds 65 cents. Reparation awarded.

Thorpe Babcock and *L. S. McIntyre* for complainants.
Charles Donnelly for defendants.

REPORT OF THE COMMISSION.

MEYER, *Commissioner:*

The complaint in this case is brought by the West Coast Lumbermen's Association and a large number of individual manufacturers of cedar shingles located in the Pacific northwest. It is alleged that defendants' rate of 67 cents per 100 pounds, as published in Countiss's tariff I. C. C. No. 1017, for the transportation of cedar shingles in carloads from points in Oregon, Washington, and British Columbia, situated in what is known as the coast group, to Chicago, Ill., St. Louis, Mo., and points in Illinois, Indiana, Iowa, Michigan, Missouri, and Wisconsin is unreasonable. It is also alleged that this rate as compared with the rates from California and Louisiana to the same points is unduly prejudicial. Reparation is asked by the individual manufacturers parties to the complaint.

In constructing rates on cedar shingles to the destination territory in question, the rate to Minnesota Transfer, Minn., is taken as the base, to which are added the local or proportional rates applying beyond.

In 1902 joint through rates were published from the coast group to practically all of the destination territory in question, based, in most instances, on the Minnesota Transfer combination, and were made applicable via the Missouri River gateways as well as via Minnesota Transfer. At that time the rate to Minnesota Transfer was 50 cents, and the proportional rate from there to Chicago was 10 cents. The 50-cent rate to Minnesota Transfer also applied to Du-

luth, Minn., and from Duluth to Chicago there was a rate of 10 cents made to meet water competition. The 10-cent proportional rate from Minnesota Transfer to Chicago was published to equalize the two gateways and was 3 cents less than the local rate. There was also a proportional rate of 12½ cents from Minnesota Transfer to St. Louis, which was 2½ cents less than the local rate. There were no proportional rates from Minnesota Transfer to most of the other destinations, and the local rates thereto were generally higher than the proportional rates above referred to. For instance, the local rate from Minnesota Transfer to most of the Illinois points was 13 cents and to most of the Iowa points 12 cents, as compared with the proportional rate of 10 cents to Chicago, a farther distant point. To most of the Iowa points the joint through rate was accordingly made 62 cents and to most of the Illinois points 63 cents, as compared with 60 cents to Chicago. The rates to the destinations in other states were made the same as or with relation to these rates. The Chicago rate was applied to St. Louis in order to equalize that point with Chicago on traffic destined to central freight association territory.

In 1907 all the joint through rates referred to above were increased 10 cents per 100 pounds, but in June, 1908, the Commission in *Oregon & Washington Manufacturers Asso.* v. *U. P. R. R. Co.*, 14 I. C. C., 1, held that the higher rates were unreasonable and that the increases over the rates maintained in 1907 should not have exceeded 5 cents per 100 pounds. Accordingly the through rates were reduced to 67 cents to the Iowa points, 68 cents to the Illinois points, and 65 cents to Chicago and St. Louis. The rates to the other destinations in question were again made the same as or with relation to these rates. The rate that we permitted to be charged to the Missouri River was 5 cents less than that charged to Chicago and St. Louis, and in our report we said:

> The rates from the Missouri River crossings should be graded up, and the maximum increase of 5 cents should be reached at the Mississippi River. Chicago rates should apply to all points between the Mississippi River crossings, East Dubuque to East St. Louis, inclusive, and Chicago. The rates to St. Louis and points taking the same rates should not exceed the rates to Chicago. This adjustment preserves the differential fixed by the carriers under the advanced rates between the Missouri River and Chicago, and also maintains the parity fixed by defendants between St. Louis and Chicago.

Higher rates than to Chicago and St. Louis were nevertheless continued to intermediate points east of the Missouri River. In connection with that situation we used the following language in *Pacific Coast Lumber Manufacturers Asso.* v. *N. P. Ry. Co.*, 16 I. C. C., 465:

Complaint is also made * * * that in applying the increase of 5 cents per 100 pounds authorized by the Commission to points east of a certain line defined by the Commission, the carriers did not act upon the suggestion contained in the report of the Commission that the increase should be graded up between the Missouri and the Mississippi rivers or between the Minnesota-Dakota state line and St. Paul. That requirement, however, was not contained in the Commission's orders, and, while it would seem that in some instances the suggestion might reasonably have been given more weight and effect, it is apparent that it could not be literally complied with without serious interference with the long-established relationships in rates as between competing points of production, competing carriers, and competing markets in the territory of distribution and consumption.

In *Railroad Commissioners of Iowa* v. *A., T. & S. F. Ry. Co.*, 34 I. C. C., 111, we found that the maintenance of higher rates to the Iowa points than to Chicago and St. Louis was unjustly discriminatory and that a violation of the long-and-short-haul rule was not justified. In the report therein we said:

We find in this case that the carriers have not shown any necessity for the maintenance of a lower rate to Chicago than to intermediate points, or that the rate to Chicago is materially, if any, lower than a reasonable and fairly remunerative rate.

Our order required the removal of these inconsistencies. The complainants herein were later advised by one of the interested carriers that in compliance with our decision the various lines had checked in a rate of 65 cents from the coast group to Chicago and the intermediate points, but that rate was never published. Our final order was complied with on January 15, 1916, by advancing the Chicago and St. Louis rates from 65 cents to 67 cents and by bringing the rates to all the other destination points involved to that level. Protests were filed, but the Commission declined to suspend the new schedules, whereupon this complaint was filed asking that the 67-cent rate to all the points be reduced to 65 cents.

In March, 1915, the 10-cent rate from Duluth and Minnesota Transfer to Chicago was increased to 11 cents. By tariffs filed to become effective in July and August of the same year, the 11-cent rate was proposed to be increased to 12 cents, but the schedules were suspended by the Commission. In *Lumber Rates between Points in Western Trunk Line Territory*, 38 I. C. C., 370, decided March 14, 1916, we found the 12-cent rate to be reasonable and allowed it to go into effect May 6, 1916. From January 15, 1916, the date on which the 67-cent rate to Chicago became effective, until May 6, 1916, when the 12-cent rate from Minnesota Transfer and Duluth went into effect, the aggregate of the intermediate rates was less than the joint through rate to Chicago. This situation resulted from the fact that

we suspended the 12-cent rate but allowed the 67-cent rate to go into effect.

Complainants say that the shingle industry of the Pacific northwest was formerly in better condition than it is at present. Generally speaking, there has been a gradual decline in the price of shingles. In 1908 the best grade was selling f. o. b. the mill at $2.20 per thousand. In 1915 the price was $1.65 per thousand. In 1916, however, the average price was $2 per thousand. The higher price obtained in 1916 than in 1915 is attributed by complainants to car shortage. The principal competition met by the complainants is that from manufacturers of other roofing materials, but there is also competition from producers of shingles in California and Louisiana.

The principal argument of defendants in attempting to justify the 67-cent rate is that it conforms to the combination on Minnesota Transfer. However, although the 12-cent rate from Minnesota Transfer to Chicago and other destinations applies on lumber as well as shingles, it is not used in conjunction with the lumber rate from the coast group to Minnesota Transfer to construct through rates on lumber to the destinations here involved. The rates on lumber are lower than the combination on Minnesota Transfer.

The rate on redwood shingles from California points to Chicago is 65 cents, and the distance, taking San Francisco as representative, is about 2,600 miles. No increase was made in this rate when the rate from the points involved in this case was increased. The distance from Seattle, Wash., as representative of these points, to Chicago is about 400 miles less. From the producing points in Pacific coast states generally the rates on cedar shingles are ordinarily on a differential of 10 cents over the rates on fir lumber. The rate on fir lumber from the coast group to all or practically all of the destinations involved in this case is 55 cents. If the usual differential were observed, the rate on cedar shingles to these points would be 65 cents. Shingles are accorded no service that is not accorded lumber at Minnesota Transfer.

Upon consideration of all the facts of record, we have reached the conclusion that defendants have not justified the increased rates. We find that 65 cents per 100 pounds is a reasonable maximum rate from the coast group to Chicago, St. Louis, and the other points in question.

The various manufacturers who were seeking reparation were not present at the hearing to give testimony as to whether the shipments were sold f. o. b. the mill or at a delivered price. Defendants agreed, however, at the hearing that these matters might be proven by the submission of affidavits to the Commission and that they

would waive cross-examination of the parties who made them. We will consider the entry of an order for reparation on shipments made by complainants on and after January 15, 1916, upon receipt of statements prepared in accordance with rule V of the Commission's Rules of Practice and accompanied by affidavits respecting the matters above referred to which were not proven at the hearing.

An order will be entered at this time requiring the establishment and the maintenance as maxima of the rate herein found reasonable.

No. 8483.

A. P. GREEN FIRE BRICK COMPANY

v.

CHICAGO & ALTON RAILROAD COMPANY ET AL.

Submitted April 8, 1916. Decided April 24, 1917.

Present relation of rates on fire brick in carloads from Mexico and St. Louis, Mo., found to be unduly prejudicial to complainant and preferential of shippers at St. Louis; defendants required to revise rates to territory relatively near, giving recognition to substantial differences in distance.

Walter E. McCornack for complainant.

F. H. Towner, *C. W. Galligan*, *N. S. Brown*, *Thomas Bond*, and *L. C. Mahoney* for defendants.

Thomas L. Philips for Laclede-Christy Clay Products Company, intervener.

REPORT OF THE COMMISSION.

HARLAN, *Commissioner:*

In this complaint it is alleged that the carload rates on fire brick and fire clay products from Mexico, in the state of Missouri, to a large number of destinations in the several classification territories are unreasonable and unjustly discriminatory to the extent that they exceed the rates on similar commodities from St. Louis to the same destinations.

Mexico is served by three railroad lines, the Wabash Railroad, hereinafter termed the Wabash; the Chicago & Alton Railroad, hereinafter termed the Alton; and the Chicago, Burlington & Quincy Railroad, hereinafter referred to as the Burlington. The Wabash affords rail facilities southeast to St. Louis and points beyond and northwest to Ottumwa and Des Moines, both in the state of Iowa; the short-line distance to St. Louis, 110 miles, is over the rails of this carrier. At Moberly, about 40 miles northwest of Mexico and in the same state, it intersects the main line of the Wabash extending west to Kansas City and Omaha and east to Chicago and beyond, crossing the Mississippi at Hannibal. Eastbound traffic from Mexico moves principally through Moberly and Hannibal. The Alton affords an outlet west to Kansas City and beyond, east to the territory beyond the Mississippi, crossing the river at Louisiana, 51 miles

from Mexico, and southeast to East St. Louis and beyond. The distance from Mexico to East St. Louis over the rails of this carrier is 155 miles. The Burlington reaches Mexico by means of a branch line which connects with the main line at Old Monroe, 64 miles from Mexico, from which point it extends southward to St. Louis and East St. Louis and northward to the general territory reached by the Burlington system, including points in the states of Illinois, Iowa, and Nebraska.

The testimony offered upon the hearing related to rates on fire brick only. Broadly speaking, the rates on this commodity from Mexico to the north and northwest, including northern Illinois, Wisconsin, Minnesota, Iowa, South Dakota, and a portion of Nebraska, are the same as the rates from St. Louis. To southern Illinois and the territory east of the Indiana-Illinois line the rates from Mexico, with some exceptions, are 3 cents higher than from St. Louis; to territory south of the Ohio River and east of the Mississippi the rates from Mexico are either 3 cents or 4 cents higher than from St. Louis, depending upon the routing of the traffic, the lower rate applying over the Alton and the higher in connection with the Wabash; to points in Arkansas, Louisiana, and Texas the rates from Mexico and St. Louis are equal. Although to most of the points in Oklahoma and Kansas and to some points in Nebraska the rates from Mexico are lower than from St. Louis, the complainant contends that there is no traffic to such lower rated points and that to nearly all points where there is an actual movement Mexico has no advantage in rates, although its distance is materially less. It is the contention of the complainant that the present rate adjustment in effect from Mexico is unduly prejudicial to that city; it urges that if St. Louis in its rates to the east and southeast is given the advantage of the 110 miles difference in distance, Mexico should have a similar advantage in rates where it has the advantage in distance over St. Louis. The complaint therefore prays: (1) That Mexico be placed on the St. Louis basis as to rates in all directions; or (2) that Mexico, where it has the advantage of St. Louis in distance, be given rates lower than from St. Louis. While the complaint specifies the territory to which a differential of 3 cents under St. Louis is desired, this request was modified on the hearing and on its briefs, and the desires of the complainant are now understood to be in substance as above stated.

The president of the complainant corporation testified that it is able to do a general business in all of the surrounding territory excepting the "quadrant" to the east and southeast of St. Louis, but that from this section it is barred by its disadvantage in rates. The complaint as filed is directed only against the competition of St.

Louis shippers, but at the hearing it developed that the complainant has competitors also at Vandalia, Fulton, and New Florence, in the state of Missouri; at Granite City, Alsea, Ottawa, Streator, and La Salle, in the state of Illinois; and in the Ashland and Portsmouth districts of Kentucky and Ohio. It was also urged upon the hearing that the rates on brick from Vandalia and from some of the Illinois points are unduly prejudicial to complainant. The accompanying statement showing the rates from Mexico and St. Louis to representative points, grouped for convenience as northwest, northeast, southeast, and southwest, will illustrate the general rate situation. The short-line distances and ton-mile earnings are also given to indicate the earnings under the rates. To points in the southeast distances from Mexico are given over both the Wabash and Alton, corresponding to the rates applicable.

Destinations.	Mexico, Mo.			St. Louis, Mo.		
	Distance.	Rate per cwt.	Revenue per ton per mile.	Distance.	Rate per cwt.	Revenue per ton per mile.
Northwest:	*Miles.*	*Cents.*	*Mills.*	*Miles.*	*Cents.*	*Mills.*
Des Moines, Iowa	280	7.5	6.52	339	7.5	4.42
Cedar Rapids, Iowa	259	9	6.95	307	9	5.86
Ottumwa, Iowa	169	7.5	8.85	247	7.5	6.07
Omaha, Nebr	304	7.5	4.93	413	7.5	3.63
Lincoln, Nebr	359	10.5	5.85	468	10.5	4.49
Sioux Falls, S. Dak	465	12	5.16	575	12	4.17
Albert Lea, Minn	367	10.5	5.72	462	10.5	4.55
St. Paul, Minn	486	10.5	4.32	563	10.5	3.73
Northeast:						
La Crosse, Wis	464	8	3.45	441	8	3.63
Madison, Wis	404	9.5	4.70	370	9.5	5.13
Chicago, Ill	320	7.4	4.62	283	7.4	5.23
Peoria, Ill	191	5.8	6.07	162	5.8	7.16
Springfield, Ill	135	4.75	7.04	98	4.75	9.69
Fort Wayne, Ind	402	[1] 11.4	5.67	342	8.4	4.91
Terre Haute, Ind	279	[2] 9.05	6.49	169	6.05	7.16
Columbus, Ohio	512	13.5	5.27	423	10.5	4.96
Southeast:						
Nashville, Tenn	[3] 475	12	5.05	323	9	5.57
	[4] 433	13	6.00			
Memphis, Tenn	[3] 463	13	5.62	305	10	6.56
	[4] 415	14	6.75			
Chattanooga, Tenn	[3] 626	15	4.79	474	12	5.06
	[4] 584	16	5.48			
Atlanta, Ga	[3] 763	18	4.72	611	15	4.91
	[4] 721	19	5.27			
Birmingham, Ala	[3] 637	17	5.34	485	14	5.77
	[4] 595	18	6.05			
Montgomery, Ala	[3] 733	22	6.00	581	19	6.54
	[4] 691	23	6.66			
Jackson, Miss	[3] 675	24	7.11	517	17	6.58
	[4] 627	24	7.66			
Vicksburg, Miss	[3] 683	18	5.27	525	15	5.71
	[4] 635	18	5.67			
Southwest:						
Alexandria, La	709	22	6.21	599	22	7.35
Shreveport, La	664	22	6.63	563	22	7.82
Dallas, Tex	606	24	7.92	686	24	7.00
Little Rock, Ark	459	17	7.41	349	17	9.74
Muskogee, Okla	376	12	6.38	457	12	5.25
Oklahoma City, Okla	465	16.5	7.10	542	18.5	6.83
Kansas City, Kans	167	5	5.99	282	7.5	5.32
Wichita, Kans	390	12	6.15	479	12	5.01

[1] Via the Wabash R. R. rate is 8.9 cents; revenue per ton per mile, 4.43.
[2] Via the Wabash R. R. rate is 7.1 cents; revenue per ton per mile, 5.09.
[3] Via Chicago & Alton.
[4] Via Wabash.

It was stated in behalf of the lines serving central freight association territory that in general the rates from Mexico to destinations in that territory are constructed on the usual basis; that is, by combination on the Mississippi River. When commodity rates on fire brick were first established from St. Louis that city was practically the only point in the west producing that commodity. Later a plant was established at Vandalia, and, because of its proximity to the river, that point was given the St. Louis rate to a large part of central freight association and eastern territories. When plants were successively established at Mexico, 23½ miles west of Vandalia, and at Fulton and Versailles, still farther west, they were given differentials above Vandalia corresponding to the increasing distance from the river. The defendants contend that if this general rule for the construction of rates on the Mississippi River is departed from in the case of fire brick, manufacturers and dealers in other commodities will ask for and be entitled to a similar readjustment. The lines east of the Mississippi, it is contended, now receive but a low revenue from the traffic and can not afford an abatement, while the carriers originating the traffic at Mexico and delivering it to connections at St. Louis or East St. Louis have a short haul for which the present earning of 3 cents or 4 cents is no more than is reasonable. The Wabash, the short line from Mexico to St. Louis, has an expensive service through the St. Louis and East St. Louis terminals, and on traffic over this route must pay a bridge toll in crossing the Mississippi. The Alton has its own bridge at Louisiana, but its line from Mexico to East St. Louis is about 155 miles in length as compared with 110 miles from Mexico to St. Louis over the Wabash. On June 26, 1915, the Wabash reduced its rates on fire brick from Mexico to certain stations in central freight association territory when the traffic moves through junction points that give the Wabash a relatively long haul. Under such routing its present rates to those points are about 1 cent higher than the St. Louis rates. These rates were established upon the request of the Chicago Fire Brick Company, which had recently opened a plant for the manufacture of brick at New Florence, in the state of Missouri. The traffic from New Florence moves through Mexico, and the latter point is therefore given the benefit of the reduced rates. Upon the hearing, the representative of the Alton expressed the opinion that his company would follow the example of the Wabash in establishing lower rates from Mexico, but the Commission's files do not show that any such action has yet been taken.

The representative of the Frisco, who testified with respect to the territory served by that carrier, including the general territory east of the Mississippi and south of the Ohio, made a similar defense of the adjustment to the southeast based upon the full Mississippi River

combination. In *Ashland Fire Brick Co.* v. *S. Ry. Co.*, 22 I. C. C., 115, the Commission considered the rates from St. Louis to this territory when compared with rates from the producing districts in Kentucky and Ohio to the same territory. The question at issue in that proceeding was one of discrimination as well as of the reasonableness of the rates. It was there shown that the rate from St. Louis to Birmingham had been reduced from 17 cents to 14 cents, and the general testimony of the carriers was that in view of the switching and bridge charges at St. Louis the rate of 14 cents was unreasonably low. After deducting such charges the revenue per ton per mile of the four lines publishing this rate was shown to average less than 5 mills. To the eight representative points shown in our statement, the average revenue per ton per mile is 5.84 mills. The present record supports the conclusion that the present rates from St. Louis to the territory south of the Ohio and east of the Mississippi are not excessive, and that the local rates of the Wabash and Alton, 4 cents and 3 cents, respectively, from Mexico to St. Louis or East St. Louis, used as factors in the through charges to that territory, in view of the relatively short haul, are not unreasonable.

As to points in Arkansas and Louisiana to which the rates from Mexico are the same as from St. Louis, the record indicates that the short-line distance from Mexico in most instances is made through St. Louis. To these points, therefore, St. Louis has the advantage of 110 miles in distance, with no advantage in rates. To points in Texas the advantage in distance is in favor of Mexico. In behalf of the defendants it was stated that it is the practice of the carriers in establishing rates west of the Mississippi River to observe larger groupings, both of origin and of destination, than in the territory east of the Mississippi, where the traffic is more dense and the rates lower. On general classes and commodities Mexico is in St. Louis territory, which embraces practically all the territory on the line of the Burlington across the northern part of Missouri and generally all the points on both the Wabash and Alton between St. Louis and Kansas City. Therefore, in the adjustment which gives Mexico lower rates than St. Louis to points in Oklahoma, it is asserted that Mexico is favored to a greater extent than is justified by the small difference in distance from that point. An examination of the tariffs indicates a somewhat confused condition of rates to that territory. Certain stations in Oklahoma, such as Tulsa, Muskogee, Sapulpa, and Bartlesville, have lower rates than other points equally distant, the reason for which being, as stated of record, that they are the locations of glass manufactories. These industries were formerly located at points in Kansas, much nearer to St. Louis and Mexico, and were given correspondingly low rates; when upon the exhaustion of gas in Kansas they were removed to Oklahoma the low rates were

also applied to the new locations. In further explanation of the inconsistencies it is stated that the carriers do not establish commodity rates to particular points in this territory until there is a demand based upon a prospective movement. This is true, however, only as to certain lines.

But little testimony was offered by the carriers with respect to the present rates to territory north and northwest of St. Louis and Mexico. By reference to the table shown above it will be seen that the average distances from either Mexico or St. Louis to points of consumption in that territory are much less than to most southwestern points to which rates from both points of origin are equal. Whatever justification there may have been for the original grouping of Mexico and St. Louis as to traffic destined to the relatively near-by points in northern Illinois, Iowa, southern Minnesota, and Nebraska when the rates were established, there appears to be no sufficient justification now for a continuance of that policy. The differences in conditions east and west of the Mississippi, which are relied upon to justify the difference in the methods of rate construction, are disappearing. By reference to the statement it will be noted that the rate of 7½ cents from Mexico is spread over a territory extending from Ottumwa, 169 miles, to Omaha, 304 miles, and that the same rates are also maintained from St. Louis, which is about 100 miles more distant. The ton-mile revenue on such rates from St. Louis to Ottumwa and Omaha is 6.07 mills and 3.63 mills, respectively. To St. Paul, 486 miles distant from Mexico, and 563 miles from St. Louis, the rate is 10½ cents, yielding from Mexico 4.32 mills and from St. Louis 3.73 mills per ton-mile. Comparing distances and rates from Mexico to Omaha and Lincoln, we find that for a difference in distance of 18.1 per cent the rate increases 40 per cent. To these points from St. Louis the ton-mile earnings are 3.63 mills and 4.49 mills, respectively, as against 4.93 mills and 5.85 mills from Mexico. This record is bare of evidence explaining the origin and reason of this adjustment, the result of which apparently gives to St. Louis rates which are low and unduly preferential when compared with the rates from Mexico. The general rates from St. Louis have long borne a relationship to rates from Chicago, and we are aware that to question the present adjustment on brick from St. Louis and Mexico to this territory is in effect to question other adjustments not now before us. This, however, is not a controlling consideration. We have seen that these groupings are being abandoned in connection with rates on brick to Kansas, Oklahoma, and a portion of Nebraska, which territory, on account of its greater distance, affords a better justification for their continuance than here. We conclude and find that the present relationship between rates on fire brick in carloads from Mexico and from St. Louis, respectively, is unduly prejudicial to the

complainant and unduly preferential of shippers at St. Louis. We do not find, however, that the 3-cent differential between the rates from Mexico and St. Louis to eastern and southeastern points may properly be used as a measure of the differential to be applied to traffic to the west. We have already pointed out the fact that the lines delivering shipments from Mexico to connections at St. Louis or East St. Louis have a very short haul and assert that they can not reasonably expect relief from their eastern connections in case of a readjustment of through rates upon a lower basis.

The Laclede-Christy Clay Products Company, intervener, a manufacturer of fire brick at St. Louis, joins in the complainant's request that rates to all points be made the same from Mexico as from St. Louis, and contends that the present rates to Oklahoma points unduly favor Mexico. We are unable to agree with this view. We are of the opinion that the readjustment of rates to Oklahoma, Kansas, and Nebraska, recognizing substantial differences in distance, should be completed and should be extended to other territory. With the multiplication of shipping and consuming points throughout the territory west of the Mississippi large groupings can not consistently be maintained.

The alleged discrimination against Mexico and in favor of Vandalia and producing points in Illinois was not placed in issue by the complaint as filed, and the present record does not therefore permit a finding as to this situation. It appears, however, that Vandalia, as to most points both east and west, is given the St. Louis basis of rates. We are unable to find in the explanation of its origin as already stated any justification for this arrangement. Vandalia is 27 miles from the Mississippi River and only 23½ miles from Mexico. If points of production are to be grouped it is apparently more equitable to group Vandalia with Mexico than with St. Louis or any other Mississippi crossing.

The record before us, while justifying the conclusion that the present grouping of the points of origin and destination is improper, does not afford a satisfactory basis for prescribing reasonable rates from these points to the territory involved. The representatives of the defendants at the hearing practically admitted the justness of complainant's request for a differential under St. Louis where the distance favors Mexico, and for the establishment of a proper relation between the rates from Mexico and from Illinois points based upon distance and other transportation conditions. They will therefore be expected to submit within 90 days from the service of this report for our examination and approval a readjustment of the rates here found unduly prejudicial, and the record will be held open for such further proceedings as may be necessary or desirable.

No. 4611.

RICHMOND CHAMBER OF COMMERCE

v.

SEABOARD AIR LINE RAILWAY ET AL.

Submitted May 6, 1915. Decided April 28, 1917.

Upon rehearing in *Richmond Chamber of Commerce* v. *S. A. L. Ry.*, 30 I. C. C., 552, *Held:*

1. That the carriers' practice of uniformly absorbing switching charges on carload traffic to or from industries located on the Norfolk & Portsmouth Belt Line Railroad at Norfolk, while refusing to absorb switching charges on like traffic at Richmond, is not unduly preferential of Norfolk or unduly prejudicial to Richmond shippers.
2. That the practice of certain carriers serving Richmond of absorbing switching charges only when the switching line competes with the line-haul carrier, while refusing to absorb such charges when the switching line does not compete with the line-haul carrier, constitutes undue discrimination within section 2 of the act to regulate commerce when the switching service performed is substantially similar.
3. The original order modified in accordance with the findings of this supplemental report.

W. A. Glasgow, jr., and *C. D. Drayton* for complainant.

F. W. Gwathmey, *J. A. Moss, jr.*, *R. Walton Moore*, and *C. J. Rixey, jr.*, for Seaboard Air Line Railway, Southern Railway Company, and Atlantic Coast Line Railroad Company.

W. S. Bronson for Chesapeake & Ohio Railway Company.

REPORT OF THE COMMISSION UPON REHEARING.

DANIELS, *Commissioner:*

In the original report in this case, *Richmond Chamber of Commerce* v. *S. A. L. Ry.*, 30 I. C. C., 552, we found that—

the refusal of the defendants to absorb switching charges on some carload shipments at Richmond while absorbing such charges on other carload shipments to and from that point is unjust discrimination against the shippers who are required to pay such charges, and also that the refusal of the defendants to absorb switching charges on some carload shipments at Richmond while absorbing such charges on like shipments at Norfolk is unjust discrimination against Richmond and traffic transported to and from that point.

An order was entered against certain of the defendants therein, the Atlantic Coast Line Railroad Company, Seaboard Air Line Railway, and Southern Railway Company, whose lines reach both

Norfolk, Va., and Richmond, Va., requiring them to cease and desist, on or before September 1, 1914, from charging for the switching of carload freight at Richmond any higher rates than they contemporaneously charge shippers and receivers of such carload freight for switching interstate carload freight at Norfolk.

This order not fully reflecting our findings as above set forth, complainant requested a modification thereof as regards the alleged discrimination between shippers at Richmond. The three defendants to our original order having also filed a petition for rehearing, the Commission reopened the entire case for further consideration.

Neither at the original hearing nor upon rehearing were the rates in effect at Richmond or Norfolk alleged to be inherently unreasonable. Richmond shippers contend, however, that the Virginia cities, including Norfolk and Richmond, are generally on an in and out rate parity, and that for the carriers serving both Richmond and Norfolk to absorb certain switching charges at Norfolk while refusing to absorb the switching charges on like traffic at Richmond puts the Richmond shipper at a substantial disadvantage, a disadvantage which is alleged to be unlawful. The point is also made that the present absorption practices in effect at Richmond unduly prefer certain of the shippers there located to the prejudice of other shippers at that point.

We are of the opinion upon further consideration that the discrimination alleged to exist by virtue of the diversity of absorption practices at Richmond and Norfolk is not unlawful. It appears on further hearing that the former record in this case did not fully explain the absorption practices in effect at Norfolk. In our original report we said, at page 557:

No charge is imposed on the shipper or receiver of freight for switching at Norfolk.

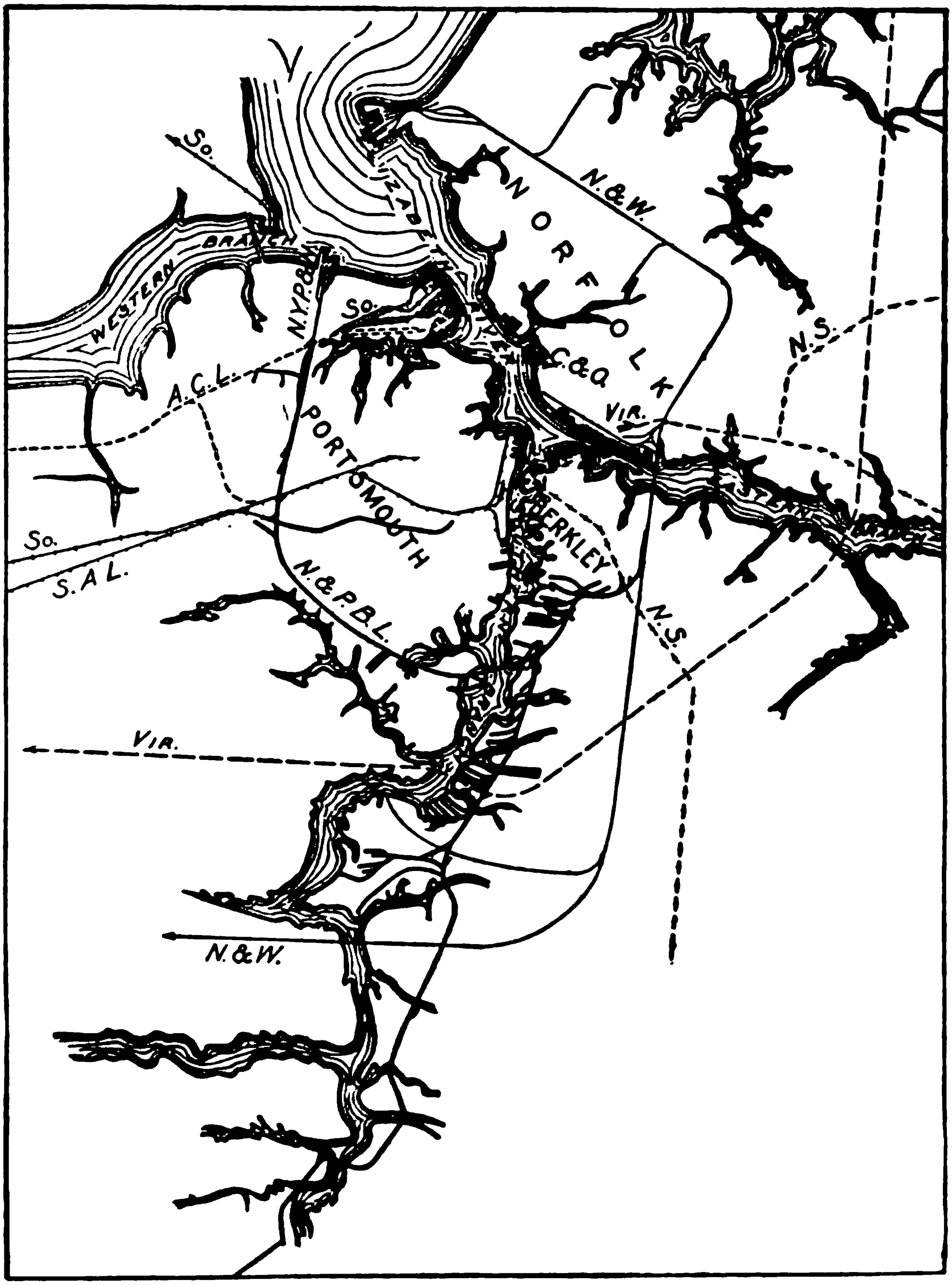
From the added evidence on the rehearing it now appears that this is true only with respect to those shippers located on the Norfolk & Portsmouth Belt Line Railroad Company, hereinafter called the belt line. The industries on the rails of other carriers, which include about three-fourths of the entire number, are subject to the same limited absorption practices as are in effect at Richmond. It is only those shippers at Norfolk located on the rails of the belt line who are alleged to be unduly preferred when compared with shippers at Richmond. Whether this general absorption of all switching charges to and from points on the belt line unduly discriminates against shippers at Norfolk located on other roads is not in issue in this case.

Prior to November 6, 1909, the three southern carriers petitioners herein and hereinafter called the Coast Line, the Seaboard, and the Southern, together with the Chesapeake & Ohio Railway Company and the Richmond, Fredericksburg & Potomac Railroad, absorbed all switching charges on carload traffic at Richmond to or from other than local points on their own lines, local points being defined as those points not reached by two or more lines. Thereafter, however, by tariffs duly filed, the Coast Line, the Seaboard, and the Southern, while continuing to refuse to absorb the switching charges to and from local points, also refused to absorb the switching charges to and from common points unless the switching line was in competition for the traffic with the line-haul carrier. Coal and coke have never been included in the nonabsorption provisions. On traffic to industries situated on the Norfolk Belt Line, however, the defendant carriers have consistently absorbed the switching charges on carload traffic indiscriminately whether to or from local or common points, other than on certain forest products originating at near-by Carolina producing points.

In justification of this difference in the absorption practices at Norfolk and Richmond, petitioners allege that their relationship with the belt line at Norfolk is such that it is in substance a joint terminal, and that by absorbing all switching charges to and from points thereon while refusing to similarly absorb switching charges to and from industries located at Richmond, they do not discriminate unduly against shippers at the latter point where there is no belt line.

The accompanying map shows the geographical relation of Norfolk and its adjoining suburbs. The Norfolk & Western and the Virginian, operating in connection with the Norfolk Southern, alone enter Norfolk proper. Prior to the construction of the belt line, the rails of the Coast Line, Seaboard, and Southern terminated at Portsmouth. Freight destined to Norfolk had to be ferried across the Elizabeth River, unless it was moved back to Kirby, a junction point with the Norfolk & Western, which required an extra haul of over 40 miles. To overcome this difficulty and in order that the southern carriers, together with the New York, Philadelphia & Norfolk and the Chesapeake & Ohio, might more conveniently reach those industries situated in Norfolk, the plan of constructing a belt line was inaugurated. That belt line, as finally completed in 1898, extends from the junction point of the New York, Philadelphia & Norfolk and the tracks of the Norfolk & Carolina Railroad Company, now a part of the Coast Line, at Pinners Point, Va., around the southern edge of Portsmouth and across the south branch of the Elizabeth River to a connection with the Norfolk & Western at Berkley, in all a distance of 5.8 miles. Subsequently the Elizabeth River Railroad

extending south about 7 miles from a connection with the belt line in Berkley became a branch of the belt line. The belt line, under a lease from the Southern Railway, also operates a spur 1.8 miles in



length extending into the city of Portsmouth. Freight coming from or destined to industries in Norfolk proper over any of the southern routes now reaches Norfolk via the belt line and the Norfolk & Western bridge over the eastern branch of the Elizabeth River.

It is the view of petitioners that the property of the belt line is simply the joint property of the owning lines and that, therefore, each of such lines has an equal right of access to the industries located thereon, a right which makes such industries the terminals of each owning line. Complainant insists, however, that the belt line is a distinct corporate entity and that "the absorption of its switching charges by defendants operating at Norfolk stands upon the same footing legally as though it were owned and operated independently of the defendants."

We are unable to take complainant's view of the matter. It may, of course, be true from a technical legal standpoint that a stockholder ordinarily has no interest in the property of the corporation in which he holds stock. But the control exercised by the owning lines over the belt line is such as to obliterate distinctions as to essential identity for operating purposes between the controlling companies and the belt line.

In determining whether this belt line constitutes a joint terminal, its early history and organization are significant. By act of the general assembly of Virginia, approved March 4, 1896, certain individuals were authorized to incorporate under the name of the "Southeastern & Atlantic Railroad Company," with authority to construct a railroad from any point on the line of the Norfolk & Carolina Railroad Company at Pinners Point to any point on the line of the Norfolk & Western between the eastern and southern branches of the Elizabeth River. There was no construction whatever under this charter, but by contract dated July 7, 1897, the following eight railroad companies, the New York, Philadelphia & Norfolk Railroad Company, Seaboard & Roanoke Railroad Company, now a part of the Seaboard, the Norfolk Southern Railroad Company, the Norfolk & Western Railway Company, the Atlantic & Danville Railway Company, now a part of the Southern, the Norfolk & Carolina Railway Company, now a part of the Coast Line, the Southern Railway Company, and the Chesapeake & Ohio Railway Company, entered into a mutual agreement, the preamble of which recited that—

each of the companies above named desires to secure the construction of a belt-line railroad from Pinners Point, Va., to a connection with the Norfolk & Western Railway in Berkley, Va., for the mutual benefit of each in the interchange of business, and it is conceded to be for the best interest of all that the same should be constructed, maintained, and operated under a separate organization in which all are to be equally interested and each to have an equal representation, and it has been decided to construct, maintain, and operate same under the charter of the Southeastern & Atlantic Railway Company.

Each of the contracting companies agreed to subscribe and pay for one-eighth of the capital stock, and each was to have one repre-

sentative on the board of directors. By an act approved January 12, 1898, the name of the corporation previously authorized was changed by the legislature of Virginia to the "Norfolk & Portsmouth Belt Line Railroad Company." The capital stock was fixed at not less than $20,000, and it was provided that the board of directors should consist of eight members. Shortly thereafter construction was begun and the belt line was completed and opened for business in 1898.

Not only from the act incorporating the original Southeastern & Atlantic Railroad Company and that changing its name to the Norfolk & Portsmouth Belt Line Railroad Company, but from its physical contour and manner of operation as well, it appears that the belt line was constructed for belt-line purposes only, and in order that the eight carriers might thereby have rail connections into Norfolk proper. In view of these facts and of the exclusive control which the carriers exercise by virtue of their joint stock-ownership and equal representation on the board of directors, we are of opinion and find that the belt line is a part of the line of each of the owning carriers for terminal purposes. It is of no consequence that the carriers do not directly own the belt line, but each merely its allotted share of the stock, nor that a charge of $1.50 is made in their respective tariffs for deliveries to industries located thereon. Each owning carrier contributes to the expenses of operation in the form of absorbing this switching charge, but it is simply a financial method of prorating the cost of the belt line's maintenance and operation. In substance it is nothing more or less than applying the line-haul rate to industries situated on the belt line, a practice which is not uncommon where the line-haul carrier owns the terminal severally. It is true that from time to time this joint ownership has undergone various changes, either by the sale of an interest to another carrier or through the consolidation of two or more of the original parties. At present there are seven joint owners of the stock, but in view of the relationship existing between the owning lines and the belt line, and since each owns a substantial interest in the belt line, we are of opinion and find that the industries located upon the belt line must be treated as situated on the joint terminals of all the owning lines. We therefore conclude that the practices of the Seaboard, the Southern, and the Coast Line of indiscriminately absorbing the switching charges on carload traffic to and from industries on the belt line at Norfolk, while refusing to absorb switching charges on like traffic to and from industries off their lines at Richmond, are not unduly prejudicial to the shippers at the latter point. *L. & N. R. R. Co.* v. *United States*, 242 U. S., 60; *Louisville Board of Trade* v. *L. & N. R. R. Co.*, 40 I. C. C., 679; *Manufacturers Railway Co.* v. *St. L., I. M. & S. Ry. Co.*, 28 I. C. C., 93. In

L. & N. R. R. Co. v. *United States*, *supra*, the court said, in speaking of the legal effect of the joint ownership of the Nashville terminals by the Louisville & Nashville and the Nashville, Chattanooga & St. Louis, page 73:

> If either carrier owned and used this terminal alone it could not be found to discriminate against the Tennessee Central by merely refusing to switch for it; that is, to move a car to or from a final or starting point from or to a point of exchange. We conceive that what is true of one owner would be equally true of two joint owners.

What is true of a terminal owned jointly by two carriers we consider is also true where, as here, there are seven joint owners, since each owns a substantial interest in the belt line.

There are two instances, however, where the defendants fail to absorb the switching charges to industries on the belt line. On traffic destined to the Richmond Cedar Works, which is located at the end of the 7-mile branch running south from Berkley, and the only industry of importance on that branch, defendants' tariffs carry a switching charge of $2.50, of which the carriers absorb $1.50. Defendants also refuse to absorb the switching charges on certain forest products from near-by Carolina points destined to industries on the belt line on the ground that the revenue from this traffic is too thin to make such absorption possible. Neither point is directly in issue; but since in the first instance the industry is beyond what is commonly considered the Norfolk switching limits, the practice does not seem unreasonable or unduly discriminatory. Nor are there sufficient facts in this record for us to determine whether the refusal to absorb on forest products is unlawful.

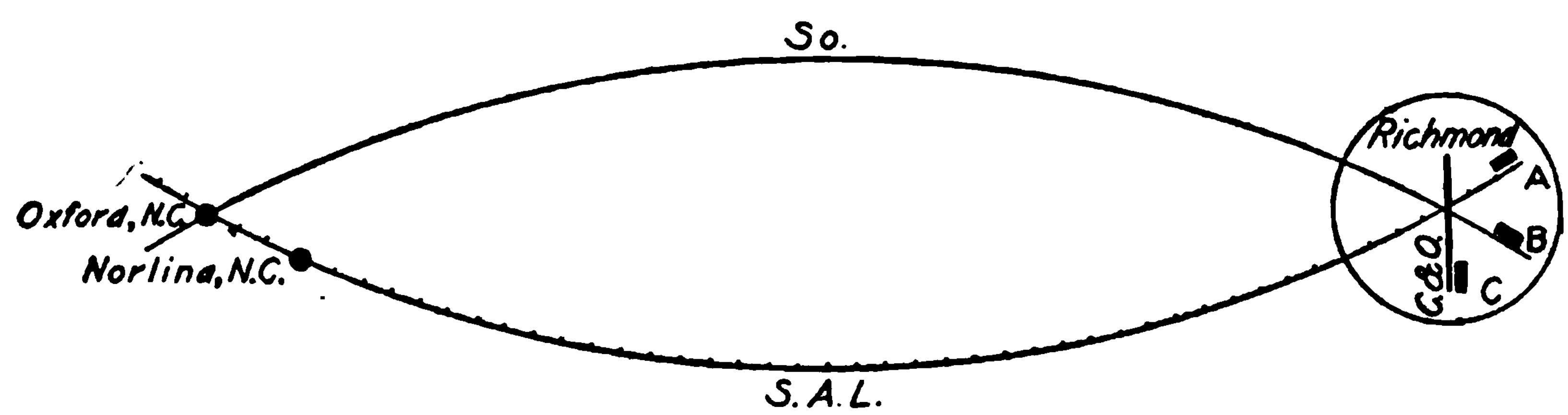
It appears that it is the practice of the owning carriers at Norfolk to refuse to absorb the switching charges of the belt line on intermediate switching of noncompetitive traffic. The carriers will be expected to remedy this inconsistency.

Passing from the first issue considered, *supra*, we come to the consideration of the present practices of the petitioning carriers at Richmond, under which the switching charges to and from industries off their lines are absorbed only in the event that the switching line actually competes with the line-haul carrier for the traffic from and to common points.

It is a general rule among the carriers serving Richmond that switching charges will only be absorbed when compelled by competition. But the so-called trunk lines, as distinguished from the southern lines, give a different meaning to the term "competition." The Chesapeake & Ohio and the Richmond, Fredericksburg & Potomac consider all traffic competitive "where two lines operate between different points regardless of the location of the industry;" that is to

say, that traffic is competitive where a point is served by more than one line even though an industry at such point may be on the local terminals of but one of the carriers. The Coast Line, the Seaboard, and the Southern treat as competitive only that traffic for which the switching line is in competition with the line-haul carrier. In other words, the Chesapeake & Ohio and the Richmond, Fredericksburg & Potomac absorb switching charges on traffic destined to or coming from all common points irrespective of whether or not the switching carrier reaches the common point with its own rails, while the southern carriers will absorb the switching charges only on traffic to and from a community which the switching line actually reaches. This practice of the southern carriers is alleged to be unjustly discriminatory and unduly prejudicial under sections 2 and 3 of the act.

The three southern carriers seek to defend these absorption practices on the ground that the "competition" on traffic to and from



an industry on a switching line which does not reach the common point is not sufficiently real to require equality of treatment in the matter of switching absorptions; that the location of an industry upon the rails of the carrier reaching the common point constitutes a substantially dissimilar circumstance within section 3; and that section 2 is inapplicable, since the service performed from the point of origin to an industry upon a competing line-haul carrier's rails is not "under substantially similar circumstances and conditions" to that performed in the transportation to an industry otherwise situated.

The precise point is best illustrated by a practical example. The accompanying diagram shows the situation. Oxford, N. C., is a point reached both by the Southern and the Seaboard, but not by the Chesapeake & Ohio. Norlina, N. C., is a local point on the Seaboard. Assume that industries A, B, and C on the Seaboard, the Southern, and the Chesapeake & Ohio, respectively, are similarly located with regard to the interchange tracks of the three carriers at Richmond. On traffic from Oxford to industry B on the Southern, the Seaboard will absorb the Southern's switching charges. But

on traffic from Oxford to industry C, on the Chesapeake & Ohio, the Seaboard refuses to absorb the Chesapeake & Ohio's switching charges. On traffic from and to Norlina, a local point, however, the Seaboard refuses to absorb all switching charges whatsoever to any off-line industry.

We do not consider that this practice is in violation of section 3. Under that section it is now well established that actual competition justifies a difference in rates. Industry C's unfavorable location on the rails of a carrier which does not reach the common point is a factor which prevents the Seaboard's refusal to absorb the switching charges on its traffic from amounting to undue prejudice within section 3. Further, it is not within the power of the Seaboard to equalize industry C's unfavorable industrial location. If, in the event of an order requiring that the undue prejudice be removed, it chose to comply by refusing to absorb any switching charges whatsoever, industry B, being on the rails of a carrier which reaches Oxford, would still retain its commercial advantage. We have expressly said that there can be no undue prejudice within section 3, unless it is within the power of the carrier charged with the discrimination to do away with it by its own act. *Ashland Fire Brick Co.* v. *So. Ry. Co.*, 22 I. C. C., 115. At page 120 the Commission said:

> The test of discrimination is the ability of one of the carriers participating in the two through routes from its two points of origin to the same point of destination to put an end to the discrimination by its own act.

The same principle was reaffirmed in *Elevation Allowances at St. Louis and East St. Louis*, 30 I. C. C., 696, 699.

But we are of the opinion that the present practices of the carriers serving Richmond are unlawful within section 2 of the act.

Complainant insists that when the line-haul carrier reaches the common point and competes for the traffic to or from Richmond proper, the absorption of the switching charges should not be confined to that traffic for which the switching line competes for the entire haul. That is, if the Seaboard absorbs the switching charges for the shipper on the terminal tracks of the Southern, it should also absorb the switching charges for the shipper on the terminal tracks of the Chesapeake & Ohio. Unless this is done, complainant contends that the two shippers are not upon an equality, since the Seaboard pays for a delivery service to shippers on the terminal tracks of the Southern and declines to pay for a similar delivery service to shippers on the terminal tracks of the Chesapeake & Ohio. This treatment, complainant argues, is similar to that condemned by the Supreme Court in *Wight* v. *United States*, 167 U. S., 512.

Section 2 is primarily directed against discrimination between shippers located in the same community. It is aimed to put all shippers within a switching district upon a substantial equality. It provides that where a carrier receives from any person a greater compensation for any service rendered in the transportation of passengers or property than it receives from any other person for doing for him a "like and contemporaneous service in the transportation of a like kind of traffic under substantially similar circumstances and conditions, such common carrier shall be deemed guilty of unjust discrimination," a discrimination which is prohibited and declared to be unlawful. Under this section it is settled that the competition of rival carriers as such does not constitute substantially dissimilar circumstances to justify a difference in treatment. *Wight* v. *United States*, *supra; I. C. C.* v. *Alabama Midland Ry. Co.*, 168 U. S., 144, 146.

In the *Wight Case*, *supra*, it appeared that the Pittsburgh, Cincinnati, Chicago & St. Louis Railway, hereinafter called the Pan Handle, and the Baltimore & Ohio Railroad served both Cincinnati and Pittsburgh. The Pan Handle applied its flat Pittsburgh rate of 15 cents to the industry of one Bruening located upon an industrial siding on its line at Pittsburgh. The Baltimore & Ohio, also carrying a flat 15-cent rate to Pittsburgh, did not reach Bruening's brewery with its own rails, but in order to meet the Pan Handle's rate to Bruening, it was accustomed to dray the traffic from its freight house to Bruening's brewery free of charge, subsequently arranging that Bruening should do the hauling, for which he was allowed 3½ cents per 100 pounds. One Wolf also operated a brewery at Pittsburgh but was not located upon the rails of any carrier and had to pay the full 15-cent Pittsburgh rate plus the drayage charge to get his shipments to his brewery, for the Baltimore & Ohio refused to make him any allowance. The Baltimore & Ohio was indicted and convicted for violation of section 2. The conviction was sustained by the Supreme Court of the United States on the ground that for the same services the Baltimore & Ohio charged 11½ cents to Bruening and 15 cents to Wolf, the 3½ cents drayage allowance amounting to a rebate. The point was taken that Bruening was more favorably situated than Wolf, since upon the rails of a carrier competing for the traffic, and hence was under substantially dissimilar circumstances. The court said, however, that "that phrase (under substantially similar circumstances and conditions) as found in section 2 refers to the matter of carriage and does not include competition." This principle was reaffirmed subsequently in *I. C. C.* v. *Alabama Midland Ry. Co.*, *supra*. At page 166 the Supreme Court said:

As we have shown in the recent case of *Wight* v. *United States*, 167 U. S., 512, the purpose of the second section is to enforce equality between shippers over the same line and to prohibit any rebate or other device by which two shippers shipping over the same line, the same distance, under the same circumstances of carriage, are compelled to pay different prices therefor; and we there held that the phrase "under substantially similar circumstances and conditions," as used in the second section, refers to the matter of carriage and does not include competition between rival routes.

We are of opinion that the principles underlying the *Wight Case*, *supra*, and the *Alabama Midland Case*, *supra*, are controlling here. It was held in the *Wight Case*, *supra*, that the fact of Bruening's location upon the rails of the Pan Handle did not justify the Baltimore & Ohio in treating him in a different manner than it did the complainant. If it was unlawful under section 2 for the Baltimore & Ohio to absorb the drayage charge on traffic over its line to Bruening's brewery, we consider that it would equally be unlawful for the Baltimore & Ohio to absorb the delivery charge were Bruening's goods, coming into Pittsburgh over the Baltimore & Ohio, switched to his industry over the rails of a subsequently constructed line or over the rails of the Pan Handle, while the Baltimore & Ohio at the same time refused to absorb the switching charges on complainant's traffic were he also now located upon a carrier's rails.

The movement from the interchange tracks of the Seaboard at Richmond to industry B or to industry C is simply a delivery service. We are of the opinion that for the Seaboard to collect the switching charges of the Chesapeake & Ohio to industry C, while absorbing the switching charges of the Southern to industry B, in effect is granting a rebate to the latter shipper and is unlawful within section 2—unlawful because the location of industry B on the Southern does not justify the Seaboard's difference in practice any more than the location of Bruening's brewery on the Pan Handle justified the Baltimore & Ohio's difference in practice. Just as in the *Wight Case*, *supra*, the Baltimore & Ohio was hauling traffic from Cincinnati to Pittsburgh for Bruening at a lower charge than it hauled the same traffic in the same direction over the same rails for the complainant, so here on traffic from Oxford over the Seaboard, industry C is paying more for the same service over the same rails in the same direction than is industry B.

Petitioners attempted to distinguish the *Wight Case*, *supra*, on the ground that the service performed for industry B and industry C is not "like" service within section 2. It is argued that were industry B and industry C not within the switching district of Richmond but 25 miles, respectively, from the interchange tracks of the Southern and the Seaboard, the service which the Seaboard performs on traffic from Oxford through Richmond to industry B

would be a dissimilar service to that rendered on traffic to industry C. They also argue that for precisely the same haul over the same rails, in the same direction, it has been held that the service rendered in moving import and domestic traffic is unlike service within section 2. *Import Rate Case*, 162 U. S., 197; *Pittsburgh Plate Glass Co.* v. *P., C., C. & St. L. Ry. Co.*, 13 I. C. C., 87, 89, 100.

We do not deny the soundness of these arguments, but where the industries are situated within the switching district of the same city and are substantially equidistant from the respective interchange tracks, we are of the opinion that the service which the line-haul carrier renders, whether the traffic is ultimately destined to industry B or industry C, is like service within section 2. It is the line-haul movement which that section primarily contemplates. Where the short delivery service within the switching district is substantially the same in either instance, we are of the opinion that the line-haul carrier is receiving a greater compensation from one shipper than from another for a like service when it absorbs the switching charges of one switching line and not those of another.

The carriers' refusal to absorb the switching charges on traffic to and from strictly local points is justifiable. In such instances the transportation service is substantially dissimilar, for the movement is either over a different line or, if over the same line, for a substantially different line haul. If the carriers, in view of our conclusions herein, hereafter absorb the switching charges equally for all shippers on traffic to or from common points, while continuing to refuse to absorb the switching charges to or from strictly local points, it may result that the aggregate charges for the latter service will exceed those for the through service to or from the industries at Richmond. Although this might be considered a technical departure from the fourth section, the Commission in Conference Ruling 304, paragraph (*d*), and in Fourth Section Order No. 5 of March 20, 1911, has provided for this situation.

We do not consider that the carriers must absorb the switching charges indiscriminately to all industries within the switching limits of Richmond if they choose to absorb the switching charges to any one industry off their rails. The illegality herein found to exist is the receiving of a greater compensation for one service than for a like service under substantially similar circumstances and conditions. To take a concrete example and referring again to the diagram. Suppose industry C were 5 miles distant from the interchange tracks of the Seaboard, while industry B were only 2 miles distant. Suppose the Chesapeake & Ohio's switching charge amounted to $5, while that of the Southern was $2. If the Seaboard absorbed the Southern's $2 switching charge on traffic to industry B, we do not consider

that it must absorb the entire $5 switching charge of the Chesapeake & Ohio on traffic to industry C, but only to the extent to which the service is similar. In other words, it would probably be necessary for the Seaboard to absorb $2 of the $5 charge of the Chesapeake & Ohio.

We are of opinion, therefore, and find, that the practice of the southern lines of absorbing switching charges only when the switching line actually competes with the line-haul carrier on traffic to or from industries at Richmond under substantially similar circumstances and conditions as defined in section 2 is unlawful.

On all coal and coke traffic from the West Virginia mines it is the general practice of all carriers at Richmond to absorb the switching charges whether the coal originates at the same mine or different mines. This is justified on the ground that coal traffic is extremely competitive; that the Chesapeake & Ohio, which serves its own mines in West Virginia, applies the line-haul rate to its industries in Richmond; that the so-called southern carriers, who deliver coal at Richmond only in connection with the Norfolk & Western and the Virginian railways, must absorb all switching charges on that traffic in order to compete with the Chesapeake & Ohio coal. We do not decide whether this amounts to undue discrimination. It does not appear that coal and coke are competitive with other traffic moving into Richmond, and the absorption of switching charges upon certain traffic and not upon other traffic is not in itself unduly discriminatory. *Cattle Raisers' Asso. of Texas* v. *F. W. & D. C. Ry. Co.*, 7 I. C. C., 513.

In so far as the order in our original report conflicts with our holdings herein, it will be modified and an appropriate order entered.

HARLAN, *Commissioner*, concurring:

The Commission in the performance of its duties must in the first instance be guided by its own construction of the law that it administers; but when any part of the act has been construed by the court of last resort it must, of course, follow along the path thus made for it. I am therefore readily able to concur in the foregoing report, not only because that disposition of the case seems necessarily to be required under the ruling of the Supreme Court of the United States in *Wight* v. *United States*, 167 U. S., 512, but because the conclusions announced in it are sound and just in themselves.

The facts in the case before us are fully stated in the report of the Commission, and it will therefore suffice in this brief expression of my own views to point out that, as between the practice of the Southern Railway at Richmond and the practice of the Baltimore & Ohio described in the *Wight Case*, there is no difference in (*a*)

the character of the service, (*b*) the reason assigned for the discrimination, or (*c*) the ultimate result both to the shipper and to the line-haul carrier. In each case is disclosed an effort by one line to overcome its disadvantage with respect to traffic of a competing line and secure it away from that line by an undertaking to make delivery at destination to a plant not on its own rails but on the rails of its competitor. To accomplish this result, the delivery service in each case is performed at the expense of the line operating under the disadvantage, thus making the cost to the consignee, for the line haul and delivery, no greater than it would have been if the competing line, with the plant on its own rails, had handled the traffic. The character and result of the service of the Southern at Richmond are therefore the same as the character and result of the Baltimore & Ohio's service in the *Wight Case.* Moreover, the reason assigned by the Baltimore & Ohio for its discrimination in the *Wight Case* was competition, and the Southern assigns the same reason here for its discrimination at Richmond.

It is true that in the *Wight Case* the Baltimore & Ohio performed the service by the use of a horse and cart, while at Richmond the same service, namely, the delivery of the traffic to the consignee's place of business from the rails of the carrier that has had the line haul, is performed for the latter by the locomotive and on the rails of a switching line. In each case, however, the same end was in view, namely, to secure the traffic away from a competing line. The only distinction between the two cases is in the facility employed for doing precisely the same thing. The question, then, seems to be, Is the thing done made lawful or unlawful according to the kind of facility used in doing it?

It is said that in the *Wight Case* the rail transportation service performed for the two shippers by the Baltimore & Ohio "was identical," and that "it was over the same rails in the same direction;" that a proper application of section 2 was made by the court in that case is therefore conceded. But that section, it is urged, "does not apply to shippers over different routes or partly over the same route and partly over different routes;" and it is said that "the transportation service from Oxford to an industry on the Seaboard and the transportation from Oxford to an industry on the Chesapeake & Ohio are not like and contemporaneous." So far as the Southern Railway is concerned, its service from Oxford to Richmond is in the same direction over the same rails and is precisely "identical" for a delivery at Richmond to an industry on the Seaboard with a delivery at Richmond to an industry on the Chesapeake & Ohio. With respect to industries on its own rails the Seaboard is merely a switching line for the Southern when the latter has the line haul;

the Chesapeake & Ohio, with respect to the industries on its rails, bears exactly the same relation to the Southern. The suggestion that the transportation service from Oxford to a Seaboard industry is not like and contemporaneous with the service to a Chesapeake & Ohio industry therefore springs only from the fact that the Southern has joined with the Seaboard in making through rates from Oxford to each industry on the Seaboard's terminals at Richmond, while it has not joined, but on the contrary refuses to join, with the Chesapeake & Ohio in making through rates from Oxford to industries on the rails of the latter in Richmond. The resulting difference in charges as between a Seaboard industry and a Chesapeake & Ohio industry is therefore a condition of the Southern's own creation. It has elected to join with one line and has elected not to join with the other, in establishing a through route and a joint through rate from Oxford to industries on their respective terminals at Richmond.

It justifies its election in the one case on the ground that, as to the Seaboard, the traffic is competitive, and it justifies its refusal in the other case on the ground that, as to the Chesapeake & Ohio, the traffic is not competitive. Precisely the same sort of competition was urged as an excuse for the discrimination which the court found to exist and condemned in the *Wight Case.* In my judgment the discrimination arising out of a similar course by the Southern at Richmond is no less apparent and real, in its effect upon industries on the Chesapeake & Ohio's terminals, than was the discrimination in the *Wight Case* as between two industries similarly situated so far as the rails of the Baltimore & Ohio were concerned. I repeat therefore that the conclusions reached in the majority report herein seem necessarily to flow from the principles announced in that case. As I have understood it, the court there lays down the broad general doctrine that, as between two shippers at the same rate point, competition between carriers does not excuse or justify a discrimination of the character condemned as unlawful under section 2 of the act. And a careful reading of the case seems not to permit of the suggestion that the court would have reached just the opposite conclusion if, instead of a horse and cart, the Baltimore & Ohio had hired a switching line to deliver the traffic to the industry on the rails of its competitor, and had thus accomplished, merely by the use of different facilities, precisely the same discrimination which, in the case under discussion, was declared to be unlawful.

In *Interstate Commerce Commission* v. *Alabama Midland Ry. Co.*, 168 U. S., 144, a fourth section question was raised and the case deals with discriminations as between communities and not as between shippers in the same community. Unless each industry at Richmond is to be regarded as a community in itself—and that seems to be the

suggestion made—the case affords no support for any ruling here other than that made in the majority report.

While the conclusions now announced may affect conditions existing, more particularly, at the larger centers, it will not be revolutionary as intimated. The result can not fail to be wholesome and helpful in a large sense.

McChord, *Commissioner*, concurring:

I wish to limit my concurrence in the majority report to what I deem to be the only issue involved in this case, namely, the matter of unjust discrimination between shippers at Richmond growing out of the switching absorption rules of the defendants effective at that point. As indicated in the majority report, in our original report in this matter, *Richmond Chamber of Commerce* v. *S. A. L. Ry.*, 30 I. C. C., 552, at page 559 we said:

the refusal of the defendants to absorb switching charges on some carload shipments at Richmond while absorbing such charges on other carload shipments to and from that point is unjust discrimination against the shippers who are required to pay such charges, and also that the refusal of the defendants to absorb switching charges on some carload shipments at Richmond while absorbing such charges on like shipments at Norfolk is unjust discrimination against Richmond and traffic transported to and from that point.

The order entered upon that report was confined to requiring the defendants to cease the unjust discrimination as found against Richmond shippers growing out of the absorption of switching charges at Norfolk. For reasons not appearing of record and which I need not add extraneously here, the order did not embrace a direction to remove the unjust discrimination found to exist between shippers located at Richmond.

Upon rehearing a more complete record was offered relating to the situation at Norfolk and it now appears that all shippers at Norfolk are not enjoying uniform treatment as concerns switching absorptions. Of course, the matter of the switching practices and rules of the carriers at Norfolk and their reasonableness as related to Norfolk shippers is not in issue in this case. This is recognized in the majority report. It says "whether this general absorption of all switching charges to and from points on the belt line unduly discriminates against shippers at Norfolk located on other roads is not in issue in this case." The majority report, however, engages in a lengthy consideration of the legal status of the Norfolk & Portsmouth Belt Line Railroad Company as related to the line-haul carriers which jointly own it and makes a finding that the absorption of the belt line's switching charge at Norfolk does not unduly discriminate against Richmond shippers where like switching charges are not ab-

sorbed. The shippers at Norfolk who are not located on the belt line are in a position identical with that of the shippers in Richmond who are located on the rails of line-haul carries whose switching charges are not absorbed by the defendants in this case. The finding of the majority report, therefore, is equivalent to a finding that the absorption of the belt line's switching charges at Norfolk is not unjustly discriminatory against shippers not located on the belt line in Norfolk. The majority report consequently virtually prejudges any case which Norfolk shippers may hereafter institute against the switching practices of the carriers serving that point.

A discussion of the legal status of the Norfolk & Portsmouth Belt Line Railroad Company and a finding concerning the absorption of its switching charges is not necessary to the disposition of this case in view of the decision of the Commission with respect to the allegation of unjust discrimination between shippers at Richmond. The majority report finds that the practice of certain carriers serving Richmond of absorbing switching charges only when the switching line competes with the line-haul carrier while refusing to absorb such charges when the switching line does not compete with the line-haul carrier constitutes undue discrimination. The order entered in this case simply requires the removal of the discrimination so found, and it might be stated that no other order could be entered on such a finding. The Commission, for instance, could not require the defendants to absorb the switching charges on all traffic. At most we can only require that the discrimination found to be unjust shall be be removed.

The order entered in this case can be complied with by the defendants in either of two ways. The defendants can amend their tariffs canceling all absorptions now provided for on so-called competitive traffic at Richmond, or they can provide that the same absorption will be made on all traffic whether so-called competitive traffic or not, excepting only local traffic to or from points reached only by one of the defendants.

Manifestly if the defendants should comply with the order as latterly suggested no question as to discrimination against Richmond shippers in favor of Norfolk shippers would arise. It must result, therefore, that the allegations concerning unjust discrimination between Richmond and Norfolk which have been advanced in this case do not and can not become an issue to be decided by this Commission until the defendants have made their choice as to how they will comply with the order respecting the unjust discrimination found to exist between shippers located within the Richmond switching district.

I do not agree with the conclusions reached by the majority report concerning the status of the Norfolk & Portsmouth Belt Line, nor with the view that the line-haul carriers can absorb the charges of this independently operated switching road without creating an unjust discrimination against shippers located in Norfolk on the rails of other line-haul carriers where the switching charges are not absorbed. I do not think the *Nashville Switching Case, supra,* is controlling of the situation at Norfolk. Because I deem these matters beside the issue in this case I will not further discuss these views on their merits.

I unhesitatingly agree with the majority report that the situation at Richmond is controlled by the *Wight Case, supra,* and concur in the views of the report in this regard and the expressions in the concurring opinion of COMMISSIONER HARLAN. No further elaboration is necessary to express my position on this phase of the case.

I do not find in the pleadings of this case any allegation which even remotely warrants the Commission in making any finding with respect to the absorption of switching charges on strictly local traffic such as the majority report undertakes to make. Whether or not the defendants' refusal to absorb switching charges on local traffic is justifiable would depend primarily upon what the practice of the defendants is in this regard at other points on their systems. This is not raised upon the record in this case and sufficient facts are not disclosed by the record to warrant a finding if the matter were in issue.

Likewise I do not concur in this further finding in the majority report as follows:

> We do not consider that the carriers must absorb the switching charges indiscriminately to all industries within the switching limits of Richmond if they choose to absorb the switching charges to any one industry off their rails.

This finding is diametrically opposed to what we have found with regard to the situation at Richmond. All industries in the Richmond switching district must be accorded like treatment. Presumably the switching rate to and from all industries within the Richmond switching district will be the same. If there is a varying scale of switching rates the absorption should be uniform nevertheless.

The view expressed in the dissenting opinions that if the majority view with respect to the controlling influence of the *Wight Case* were followed out it would result that there would be a violation of section 2 of the act where a carrier accepts a less division on through traffic than its local rate for the same haul over the same line locally, is without point since it fails to take notice that section 2 is aimed

only at the assessing of different charges against *shippers* similarly situated. If the carrier charges all shippers the same local rate and charges all shippers using the through route the same joint rate, there can be no violation of section 2 of the act no matter how the joint rate is divided as long as no shipper receives any concession from the respective rates. Certainly under no statement of the case could it be said that any difference between the local rate on the one hand or the division of the through rate on the other hand accrues as a refund to any shipper paying the joint rate.

It is my view that this case should be disposed of on the situation existing at Richmond proper without any discussion of incidental situations elsewhere which are extraneous to the issue here involved, and on this point I concur fully with the views as expressed in the majority opinion.

HALL, *Chairman*, dissenting:

I am constrained to dissent from so much of the majority report as finds the switching practices of the petitioners at Richmond unjustly discriminatory under section 2 of the act to regulate commerce.

The alleged discriminatory practices result from the rules observed by the petitioners in absorbing switching charges to or from industries off their respective lines. As stated in the majority report the switching policy of these lines is different from that of the other two defendants in this proceeding, the Chesapeake & Ohio Railway Company and the Richmond, Fredericksburg & Potomac Railroad Company. This may be illustrated as follows: Oxford, N. C., is a point reached by the Seaboard Air Line Railway and the Southern Railway, which compete for traffic from Oxford to Richmond. If the traffic moves by the Southern to Richmond, destined to an industry on the terminal tracks of the Seaboard Air Line Railway, the Southern will absorb the switching charge of the Seaboard Air Line in order to make delivery, but if the industry is located upon the terminal tracks of the Chesapeake & Ohio the Southern will not absorb the switching charge of the Chesapeake & Ohio in making delivery. Under similar circumstances the Chesapeake & Ohio or the Richmond, Fredericksburg & Potomac absorb the switching charge of the delivering line. In other words, they absorb switching charges even where the switching line is not the competitor. The defendants do not absorb switching charges to or from industries off their lines at Richmond when the traffic is from or to local points on their lines, for example, traffic moving from Norlina, N. C., via the Seaboard Air Line Railway, to an industry off the latter's rails at Richmond.

The majority report does not require the absorption of switching charges on carload traffic to or from local points on the respective lines of the defendants, but it does require that when the line-haul carriers are in competition for the traffic to or from Richmond their absorption of the switching charges shall not be confined to traffic for which the switching line competes. That is, if, in the example above given, the Southern Railway absorbs the switching charge for the industry on the terminal tracks of the Seaboard Air Line, it must also absorb the switching charge for the industry located on the terminal tracks of the Chesapeake & Ohio. Unless this is done the majority find that the two industries are not upon an equality, since the Southern Railway pays for a delivery service to industries on the terminal tracks of the Seaboard Air Line and declines to pay for a delivery service to industries on the tracks of the Chesapeake & Ohio. This inequality of treatment, it is urged, is precisely the same as that condemned by the Supreme Court in the case of *Wight* v. *United States*, 167 U. S., 512, hereinafter considered.

At this point the general practice of switching to industrial sidings should be stated. The rate on carload shipments to points within the so-called "switching limits" of a city usually includes delivery at all industrial sidings reached by the rails of the line-haul carrier. *Associated Jobbers of Los Angeles* v. *A., T. & S. F. Ry. Co.*, 18 I. C. C., 310. The special service thus accorded consignees owning industrial sidings has not been considered unlawfully discriminatory either as against those having no sidings or as against those having industries which are not reached by the rails of the line-haul carrier. To effect delivery to these latter industries the services of an additional carrier must be employed, and, as said in *Ohio Iron & Metal Co.* v. *C., M. & St. P. Ry. Co.*, 28 I. C. C., 703—

> shippers desiring delivery on the rails of another carrier ordinarily must bear the additional reasonable switching or transfer charges incident to such delivery.

The same practice obtains in the reverse movement of shipments from the industrial sidings.

With this general practice in mind, I refer again to the example above given, i. e., traffic moving via the Southern from Oxford to an industry on the rails of the Seaboard Air Line at Richmond. Under normal conditions the total charge would be the line-haul rate of the Southern plus the switching charge of the Seaboard. The Seaboard, however, also serves Oxford, and its rate includes delivery at the industry upon its own rails at Richmond. To compete for this traffic, therefore, the Southern, the line-haul carrier, must shrink its share of the total charge by the amount

of the Seaboard's switching charge. Again, in the case of traffic moving via the Southern from Oxford to an industry upon the rails of the Chesapeake & Ohio at Richmond, the through charge via the Southern would naturally be the line-haul rate of the Southern plus the switching charge of the Chesapeake & Ohio. But as the line-haul rate of the Seaboard does not include delivery to an industry on the Chesapeake & Ohio, there is no necessity for the Southern to shrink its earnings in this case, and it does not do so. It should be remarked that the practice of the Southern here illustrated of accepting smaller earnings on competitive traffic than on noncompetitive traffic is not uncommon.

In the case of *Wight* v. *United States*, *supra*, which the majority consider decisive of the question under discussion, the Supreme Court held that the absorption of drayage charges for one shipper and the nonabsorption of drayage charges for another could not be justified upon the ground of competition. There was no question in that case but that the rail transportation service furnished the two shippers was identical. It was over the same rails in the same direction. It began at Cincinnati and ended at the depot of the Baltimore & Ohio Railroad at Pittsburgh. As stated in the opinion of the court at page 517—

> The service performed in transporting from Cincinnati to the depot at Pittsburgh was precisely alike for each. The one shipper paid 15 cents a hundred, the other, in fact, but 11½ cents. It is true he formally paid 15 cents, but he received a rebate of 3½ cents, and regard must always be had to the substance and not to the form.

It is apparent that in relying upon the *Wight Case* the majority assume that the transportation service here in issue terminates upon the rails of the line-haul carrier instead of upon the rails of the delivering line. In other words, the majority assimilate the switching movement to a drayage movement from the rails of the line-haul carrier to the off-line industry. But if this reasoning is sound the case cited would require that we find all switching absorptions unlawfully discriminatory on the theory that shippers having sidings thereby receive a drayage service not accorded to shippers who have no sidings. The majority, however, do not announce their adhesion to this view.

It is clear that the transportation service in issue does not end until the property transported is delivered at the off-line industry. It is also clear that the movement to this destination is a through all-rail movement from the point of origin. Both in the case of traffic moving from Oxford via the Southern to an industry on the Seaboard and in the case of traffic moving from the same point via the same line to an industry on the Chesapeake &

Ohio the service of two carriers is required. It is true that the total charge paid by the industry on the Chesapeake & Ohio is greater by the amount of that carrier's switching charge than the charge paid by the industry on the Seaboard. But the transportation service from Oxford to an industry on the Seaboard and the transportation service from Oxford to an industry on the Chesapeake & Ohio are not "like and contemporaneous." The difference in the through charges for these two distinct services results from competition in the one case with the single-line rate. While competition will not justify a difference in charge for identical transportation services (see the *Wight Case*), this Commission has never held that the acceptance of different divisions for identical transportation hauls constitutes a violation of section 2. Since the service of the line-haul carrier is only a segment of the through haul its share of the through charges is in effect a division. If we lay down the rule in this case that carriers can not demand or receive different divisions for identical transportation hauls, where are we to draw the line?

The unjust discrimination prohibited by section 2 is restricted to the case of shippers over the same road or roads, and does not apply to shippers over different roads, or partly over the same road and partly over different roads.

From Oxford to the industry on the Seaboard the movement is over two roads, the Southern and the Seaboard; to the industry on the Chesapeake & Ohio the movement is over the same line-haul road, the Southern, and partly over another road, the Chesapeake & Ohio. The line-haul movement from Oxford is identical only if both delivering carriers have the same junction with the line-haul carrier.

One further point should be noted. The cause of the disadvantage which the majority seek to remove is not the switching absorption, but the extension of the line-haul rate to cover delivery to the industry on the rails of a line-haul carrier. The majority do not attempt to remove this cause but merely condemn its most natural result. It is not at all certain, therefore, that compliance with the proposed order will place the various industries at Richmond upon an equal basis. But even if that result were assured I could not support a finding that the present practices of petitioners at Richmond are unjustly discriminatory in violation of section 2.

I may add that I fully concur in the views expressed by COMMISSIONER CLARK in his dissenting memorandum, concurred in by COMMISSIONER CLEMENTS.

CLARK, *Commissioner*, dissenting:

I agree to the views of the majority with regard to the situation at Norfolk. I can not agree to their conclusions as to the situation at Richmond. I am especially at variance with the majority views as to the interpretation and application of section 2 of the act. This section in its terms is free from ambiguity. It refers to and prohibits only one thing, to wit, charging "any person or persons a greater or less compensation for any service rendered * * * in the transportation of * * * property subject to the provisions of this act" than is charged "any other person or persons for doing for him or them a like and contemporaneous service in the transportation of a like kind of traffic under substantially similar circumstances and conditions."

In the illustration given in the majority report a person shipping from Oxford via the Southern Railway to point B in Richmond pays exactly the same charge that another person shipping via the same line from Oxford to point A in Richmond pays. The service to point B is all performed by the Southern, and it retains all the earnings. In making delivery at point A, however, it must employ as its agent the Seaboard Air Line, and it pays the Seaboard Air Line's switching charge for that delivery; but the two shippers have paid exactly the same amounts.

I do not think that the holdings of the Supreme Court of the United States in *Wight* v. *United States*, 167 U. S., 512, which, by the way, was a criminal prosecution for actual rebating, have any application here, and I think that this view is amply supported by what the same court said in *I. C. C.* v. *Alabama Midland Ry. Co.*, 168 U. S., 144, decided not long after the *Wight Case* was decided. In the *Alabama Midland Case* the court took pains to avoid misinterpretation of what it had said in the *Wight Case* by saying:

> As we have shown in the recent case of *Wight* v. *United States*, 167 U. S., 512, the purpose of the second section is to enforce equality between shippers over the same line, and to prohibit any rebate or other device by which two shippers, shipping over the same line, the same distance, under the same circumstances of carriage, are compelled to pay different prices therefor; and we there held that the phrase "under substantially similar circumstances and conditions," as used in the second section, refers to the matter of carriage, and does not include competition between rival routes.
>
> This view is not open to the criticism that different meanings are attributed to the same words when found in different sections of the act; for what we hold is that, as the purposes of the several sections are different, the phrase under consideration must be read, in the second section, as restricted to the case of shippers over the same road, thus leaving no room for the operation of competition, but that in the other sections, which cover the entire tract of interstate and foreign commerce, a meaning must be given to the phrase wide enough

to include all the facts that have a legitimate bearing on the situation—among which we find the fact of competition when it affects rates.

In order further to guard against any misapprehension of the scope of our decision it may be well to observe that we do not hold that the mere fact of competition, no matter what its character or extent, necessarily relieves the carrier from the restraints of the third and fourth sections, but only that these sections are not so stringent and imperative as to exclude in all cases the matter of competition from consideration in determining the questions of "undue or unreasonable preference or advantage," or what are "substantially similar circumstances and conditions." The competition may in some cases be such as, having due regard to the interests of the public and of the carrier, ought justly to have effect upon the rates, and in such cases there is no absolute rule which prevents the Commission or the courts from taking that matter into consideration.

While condemning all discriminations that are unjust and all preferences and prejudices that are undue, the manifest purpose of the Congress in this legislation was to promote and encourage free, fair, and open competition between carriers. The Commission is authorized to prescribe only the reasonable maximum charge which the carrier may assess. The carrier may charge less than that reasonable maximum if it chooses to do so. This Commission has frequently said that in meeting competition a carrier may, by its election, do many things which it could not be required against its will to do. For many years it has been a general custom for carriers by railroad to secure the road haul on traffic which could be hauled by another carrier through payment or absorption of the switching charges necessary to be paid in order to have the traffic switched for it by another carrier at point of origin or of destination. There has been no secret about this practice; it is and for many years has been practically universal, and is and has been provided for in the carriers' tariffs. The practice was general before the *Wight Case* was decided and has been equally general ever since that time, and it has not until now been suggested that it involved or constituted violation of section 2 of the act.

In *T. & P. Ry.* v. *I. C. C.*, 162 U. S., 197, 219, the Supreme Court of the United States said:

Commerce, in its largest sense, must be deemed to be one of the most important subjects of legislation, and an intention to promote and facilitate it, and not to hamper or destroy it, is naturally to be attributed to Congress. The very terms of the statute, that charges must be *reasonable*, that discrimination must not be *unjust*, and that preference or advantage to any particular person, firm, corporation, or locality must not be *undue* or *unreasonable*, necessarily imply that strict uniformity is not to be enforced; but that all circumstances and conditions which reasonable men would regard as affecting the welfare of the carrying companies, and of the producers, shippers, and consumers, should be considered by a tribunal appointed to carry into effect and enforce the provisions of the act.

This expression was quoted with approval by the same court in *S. P. Co.* v. *I. C. C.*, 200 U. S., 536, 552.

In *Transit Case*, 24 I. C. C., 340, 350, this Commission said:

The act is an aid, not a hindrance, to commerce, and must be given such reasonable construction as makes to that end.

The interpretation of section 2 by the majority in the instant case will, in actual practice and in a practical way, be nothing less than revolutionary.

Of course, the purposes, principles, and substantive provisions of the act must be preserved, guarded, and observed. At the same time the fact should be recognized that we are dealing with a very practical question which involves the operation and efficiency of an industry stupendous in magnitude and vital to the welfare and the life of commerce and industry in our nation. If A ships from Oxford via the Southern Railway to point B in Richmond and B ships from Oxford via the Seaboard Air Line to point B in Richmond and under public tariffs they pay exactly the same sums for the services rendered, there is open and fair competition between the Southern and the Seaboard Air Line for the competitive traffic. It is of no public concern that one of these carriers employs the other to perform for it a part of the services. The principle is the same as that which underlies a joint through rate. The only difference is in the manner of publishing the rate.

It seems not inappropriate to note where the decision of the majority logically, aye, inevitably leads. If it is a violation of section 2 for the Southern Railway to charge a shipper the same sum for transporting each of two cars from Oxford, one delivered at point A and one at point B in Richmond, and to pay the Seaboard Air Line for switching the car to point A, thus retaining somewhat less net earnings on the car delivered at A than on the car delivered at B, it follows that it is also a violation of section 2 for a carrier to accept for an identical service on its own line different compensation in the form of local rates and divisions of joint rates on traffic of the same character coming from different points of origin or destined to different points. Every carrier of importance has its local rates applicable between the termini of its own line. It joins with other carriers in joint through rates from and to points beyond its own line, of which it receives agreed upon divisions which are generally less than its local rates and which vary according to points of origin and destination, although it hauls these different shipments of the same commodity between the same points on its own line and in the same train. If this is a violation of section 2, then all joint rates are unlawful, unless they are made by combining the full local rates of the carriers participating therein.

It must also follow that proportional rates less than local rates for the same haul on a given carrier's line are in violation of section 2, and yet in the recently enacted Panama Canal act the Congress specifically authorized the Commission to prescribe proportional rates, and defined proportional rates as "those which differ from the corresponding local rates."

It is well established that whenever it is possible to do so a legislative act should be construed in such way as to give effect to all of its provisions. Section 4 of the act prohibits charging a greater compensation for a shorter than for a longer distance over the same line or route in the same direction where the shorter haul is included within the longer, except when and to the extent that the Commission, after investigation, permits the charging of less for the longer than for the shorter distance. If the fact that in the instant case the carrier retains less revenue on one shipment than it does on another constitutes violation of section 2, the application of that principle to instances in which a carrier performs the same service on two shipments, as to one of which it earns or retains lower revenue than on the other, would invalidate relief granted by the Commission under section 4 and nullify the manifest intent of that section, in which the Commission is specifically authorized to grant relief.

I am authorized to say that COMMISSIONER CLEMENTS concurs in these views.

No. 8714.

SWIFT & COMPANY

v.

NEW YORK, NEW HAVEN & HARTFORD RAILROAD COMPANY ET AL.

Submitted October 19, 1916. Decided May 1, 1917.

1. Defendant New York, New Haven & Hartford Railroad Company's terminal rules, regulations, and practices applicable to import shipments of chilled and frozen beef delivered to defendant within the lighterage limits of New York harbor, not shown to be or to have been unreasonable or unjustly discriminatory. Complaint dismissed.
2. Certain shipments found to have been overcharged.

Albert H. and *Henry Veeder*, *R. C. McManus*, and *R. D. Rynder* for complainant.

C. M. Sheafe, jr., and *S. S. Perry* for New York, New Haven & Hartford Railroad Company.

REPORT OF THE COMMISSION.

MEYER, *Commissioner:*

Complainant is a corporation engaged in the meat packing business, with its principal office at Chicago, Ill. By complaint, filed March 9, 1916, it challenges the propriety of certain terminal rules, regulations, and practices maintained by the New York, New Haven & Hartford Railroad Company, hereinafter called the defendant, applicable to import shipments of chilled and frozen beef delivered to defendant within New York harbor.

In October, 1913, complainant commenced the importation of fresh meat through the port of New York. Import beef is shipped in quarters, securely sacked in muslin or burlap. The quarters are lifted from the vessel in rope slings and deposited on a flat car on a float placed alongside the vessel. It is then carried by hand into refrigerator cars on the same float. The work of handling the beef from flat cars into the refrigerator cars has been and is now being performed by and at complainant's expense. It is contended by complainant that this labor should properly be performed by and at the expense of defendant; or if performed by complainant, a suitable allowance should be made therefor. The chief issues are: (1) Whether

or not defendant violated its own tariff provisions applicable to the traffic under consideration in effect prior to September 12, 1914; and (2) whether or not since that date defendant's rules, regulations, and practices have been just, reasonable, and nondiscriminatory. Reparation is asked and the establishment of reasonable and nondiscriminatory rules, regulations, and practices for the future.

A brief history of the tariff provisions involved herein will conduce to a clearer understanding of the first issue. Official classification No. 38, effective March 1, 1912, and superseding issues thereof down to the present time, which govern the traffic involved, contain the following provision, commonly referred to as rule 8B:

Owners are required to load and unload all freight carried at carload ratings.

Substantially the same rule was carried in previous issues of the official classification. Effective October 15, 1911, defendant published its tariff I. C. C. No. F-412, which provided as follows:

Rule 8B, official classification; change to read:

Owners will be required to load and unload freight in carloads when carried at carload rates, except at Boston, Mass., and the piers of the N. Y., N. H. & H. R. R. and N. E. N. Co., New York, N. Y.

No substantial change was made in this item until the publication of supplement 19 to the above tariff, effective June 15, 1914, which provided:

Owners will be required to load and unload freight in carloads when carried at carload rates, except at Boston, Mass., and at New York City and Brooklyn stations of the N. Y., N. H. & H. R. R. and the New England Steamship Company, at which stations freight in carloads other than bulk freight, carried at carload rates, received or delivered at said stations, or through carriers' warehouses or sheds or over carriers' platforms, will be loaded or unloaded by the carrier. Carload freight delivered directly to or received directly from car floats, barges, or lighters of the carriers in New York harbor (this does not include cars loaded or unloaded on team tracks in connection with float movement), will be loaded or unloaded by the carriers subject to New York lighterage and terminal regulations, as per New York, New Haven & Hartford R. R. tariff I. C. C. No. F-1155, P. S. C. 1 N. Y. No. F-85, P. S. C. 2 N. Y. No. F-130, supplements thereto or reissues thereof. This arrangement will not apply at private sidings, nor on traffic switched to or from connecting line.

This provision is carried without change in succeeding supplements and tariffs of defendant, including tariff I. C. C. No. F-1811, effective at the present time.

It will be observed, however, that the portion of supplement 19 quoted above relating to carload freight delivered directly to or received directly from car floats, barges, or lighters is subject to "New York lighterage and terminal regulations, as per N. Y., N. H. & H. R. R. tariff I. C. C. No. F-1155 * * * supplements thereto or reissues thereof."

Supplement No. 2 to tariff I. C. C. No. F-1155, effective June 1, 1914, contained the following exception applicable to car-float service in lieu of lighterage:

Shippers or consignees will be required to load and unload cars, and no allowance for the service will be made therefor.

This exception was carried without change in subsequent supplements to the tariff, including supplement 4 referred to by complainant, until the publication of supplement No. 13, effective January 21, 1916, which provided:

Shippers or consignees will be required to load and unload cars of perishable freight, and no allowance for the service will be made therefor.

With respect to the tariff provisions in effect prior to September 12, 1914, complainant maintains that they are susceptible of but one interpretation, namely, that defendant was obligated to perform the loading service on cars on floats offered to defendant within the lighterage limits of New York harbor. This contention apparently is based on the wording of supplement 19 to tariff I. C. C. No. F-412, referred to above, and the erroneous assumption that prior to September 12, 1914, no exception applicable thereto existed. As heretofore indicated, supplement 19 to tariff I. C. C. No. F-412 did not become effective until June 15, 1914, fifteen days subsequent to supplement No. 2 to tariff I. C. C. No. F-1155, which provided that shippers would be required to load cars. In fact, complainant relies upon this very exception, reissued without change in supplement No. 4, as the basis for the contention that on September 12, 1914, defendant canceled its rule providing for loading cars on floats. Nothing in the tariffs quoted above justifies the construction contended for by complainant, and it is clear that prior to September 12, 1914, defendant did not purport by its tariffs to perform the loading service involved herein, and that its refusal to perform such service was not unlawful.

Coming now to a consideration of the propriety of defendant's rules, regulations, and practices, complainant's challenge of unreasonableness is based largely on the premise that the publication of supplement No. 4 to tariff I. C. C. F-1155, referred to above, shifted the burden of performing the loading service from the carrier to the shipper, and was therefore, in effect, an increase in rates made subsequent to January 1, 1910; and that the burden of justifying such increase rested upon defendant. In view of our finding herein as to the proper construction of defendant's tariffs it is apparent that the various changes therein, quoted above, did not result in an increase of rates as argued by complainant.

Complainant argues that this case is controlled in every respect by the decision of the Commission in *Lighterage and Storage Regulations at New York*, 35 I. C. C., 47. In that case the carriers defend-

ant sought to cancel their tariff provisions providing for the loading and unloading of cars on floats or the making of an allowance therefor when performed by the shipper or consignee. The Commission said, at page 62:

In our opinion the carriers are justified in requiring that shippers load and unload their freight to and from cars on car floats when ordered and placed at vessels or outside piers. That is now the usual practice. The reasons for such a rule as to carload freight on team tracks apply here with nearly equal force. The freight is switched between rails and car float in unbroken carloads, and is not ordinarily handled by the railway company's employees. The testimony shows no serious opposition to the rule requiring shippers to load and unload.

This conclusion, however, rests on grounds wholly apart from any consideration of compensation. The readjustment of rules as to service to bring them into harmony with the carriers' reasonable transportation obligations necessitates a corresponding readjustment of compensation, unless it be shown that the compensation requires no such readjustment. As the railroad companies have made an allowance to shippers for many years out of their rates, there is a presumption that the rates covered that allowance and that its discontinuance should be accompanied by a relinquishment of revenue formerly provided. There is nothing in this record to overcome that presumption. That the proposed rule would result in very substantial additions to transportation charges is beyond question.

Following this decision the defendants restored the rules theretofore in effect. In the instant case there has been no discontinuance of a service formerly maintained, and in this respect the two cases are clearly distinguishable.

While complainant disclaims any intention in this proceeding to assail defendant's rates on fresh meat in carloads, it is contended that such rates are sufficiently high to contain within themselves compensation for the loading service under consideration. Several exhibits are offered in support of this contention. One exhibit shows that prior to April 15, 1915, the rate on fresh meat from New York to Boston was 22 cents per 100 pounds. On that date it was increased to 27 cents per 100 pounds, which rate is still in effect as to traffic originating at points within the so-called lighterage limits of New York harbor exclusive of defendant's regular delivery stations. On January 1, 1910, the minimum for the movement of a car float is stated to have been one car; on June 1, 1914, increased to three cars; and on September 12, 1914, to six cars, the present minimum. Another exhibit compares defendant's rates on fresh meat in carloads from ship side in New York harbor to various representative points in New England with the rates on the same commodity from and to the same points maintained by the New York Central and the West Shore railways, together with the distances and earnings, both per ton and car mile. The point emphasized in this exhibit is that defendant re-

fuses to perform the loading service in question under its rates while under rates the same in amount the other carriers named therein perform the service or make an allowance therefor. Reference is also made to the fact that as to each of the points of destination the distances via defendant's line are the shortest and the earnings per ton and car mile greatest. Still another exhibit shows the rate, distance, and earnings per ton and car mile on fresh meat in carloads from New York harbor to Boston via defendant's line as compared with similar details with respect to rates on fresh meat for representative hauls in other territories.

Complainant further contends that the publication of supplement 13 to tariff I. C. C. No. F-1155, quoted above, which provides for the performance by defendant of the loading service in connection with all traffic except perishable freight has created an unlawful discrimination against perishable freight. It is testified that no special treatment in the movement and equipment of the car floats is required for handling fresh meat that is not required for handling other freight, except that refrigerator cars are used, which are almost invariably Swift Refrigerator Line equipment, and that such cars are cleaned and iced at complainant's expense.

It is also contended that defendant makes an unwarranted discrimination between traffic on car floats and traffic on lighters. Under its present regulations defendant undertakes to perform the loading service if the traffic is delivered to a lighter instead of a car float. It is testified that the only handling necessary upon delivery to a car float is the removal from the vessel slings to the car; that where delivery is made by lighter the carrier must unload each piece of freight from the sling into the lighter and again unload the freight from the lighter into the car at the land terminal. Thus there are two separate handlings in the case of lighterage freight, as against one handling in the case of car-float freight.

Defendant insists that its carload rates were and are made independent of loading service, and were never intended to include any additional service beyond furnishing the equipment. But this assertion obviously is subject to qualification so far as freight delivered to defendant at its regular pier stations is concerned. Defendant testifies that it has never loaded cars on floats in connection with any traffic other than nitrate of soda. This is said to be competitive freight imported through New York and moving to points in Canada in large volume at compensatory rates. It appears, however, that defendant's tariffs provide for the performance of the loading service in connection with all shipments of this commodity regardless of whether or not they are destined to competitive points.

Defendant discusses at length the difficulties under which it is forced to maintain a car-float service in New York harbor. Reference is made to the location of its rail terminals in the Bronx; its heavy interchange service with the trunk lines effected by car floats operated by and at defendant's expense; its regular pier station service; and the fact that it is compelled to navigate through Hell Gate, said to be a dangerous body of water, requiring the use of high power tugs. The relevancy of such testimony is not clear. It would appear to apply with equal force to all traffic whether perishable or nonperishable.

As will be observed from the foregoing summary of the evidence, both complainant and defendant devote much attention to considerations which may more properly be said to affect the line-haul charge rather than the loading service involved herein. But the reasonableness of the line-haul charge is not in issue. In *Lighterage and Storage Regulations at New York*, *supra*, the Commission expressed the opinion that carriers are justified in requiring shippers to load and unload freight to and from cars on floats when ordered and placed at vessels or outside piers. This rule is fundamental and generally may be regarded as expressing a sound principle, from which carriers will not be required to depart in the absence of special circumstances. The voluntary assumption by defendant of the obligation to perform the loading service in connection with nonperishable freight raises no presumption that its refusal to perform a similar service with respect to perishable freight is unreasonable. Upon a consideration of the whole record we find that defendant's rules, regulations, and practices assailed by complainant have not been shown to be or to have been unjust or unreasonable.

With respect to the alleged violation of section 3 arising out of the discrimination in service between perishable and nonperishable freight, complainant argues that a broad interpretation of section 3 of the act would not restrict its application to strictly competitive commodities, and in support of this contention refers to *L. & N. R. R. Co.* v. *United States*, 238 U. S., 1, 19. We are not convinced of the application of that case to the situation involved herein and can not accept the construction of section 3 urged by complainant, but adhere to the principles enunciated in *Board of Trade of Chicago* v. *A., T. & S. F. Ry Co.*, 29 I. C. C., 438. We are constrained to
efore, that the exception of perishable freight from the
of defendant's tariffs does not, under the circumstances
, result in such a discrimination as is forbidden by the act.
here may be merit in complainant's contention that
s rules and practices result in an unjust discrimination
affic on car floats and traffic on lighters, this issue was not

specifically raised by the pleadings and but briefly referred to at the hearing. In view of the paucity of evidence in this respect we believe the Commission may not be expected to make a finding upon that question in this proceeding.

By tariff effective December 1, 1914, defendant published a third-class rate of 25 cents per 100 pounds, applicable to beef, to Boston from its "regular deliveries in New York harbor." From all other points within the lighterage limits of New York harbor to Boston the third-class rate provided in the same tariff was 27 cents per 100 pounds. These rates and provisions are still in effect. Although most of complainant's shipments are said to have been delivered to defendant from vessels berthed at the piers of the New York Dock Company, listed as regular delivery stations, it is testified that with respect to shipments moving subsequent to April 15, 1915, complainant paid charges on its traffic on the basis of 27 cents per 100 pounds. Defendant admits that with respect to such shipments complainant was overcharged, and expresses willingness to make refund on the basis of the rate legally applicable. We find that the rate charged on complainant's shipments moving on and subsequent to April 15, 1915, and originating at vessels berthed at so-called regular delivery stations of defendant was illegal to the extent that it exceeded 25 cents per 100 pounds. Defendant will be expected promptly to refund the overcharges, with interest at the rate of 6 per cent. If this is not done the matter may be brought to our attention.

The complaint will be dismissed.

No. 8668.

GEORGE OAKLEY & SON, LIMITED, ET AL.

v.

CHICAGO, TERRE HAUTE & SOUTHEASTERN RAILWAY COMPANY ET AL.

Submitted June 26, 1916. Decided April 28, 1917.

Rates on rough sawed stone and rough stone in carloads from Bedford, Ind., and points taking the same rate, to Toronto and Hamilton, Canada, not shown to have been or to be unreasonable. Complaint dismissed.

G. B. Spence and *Walter R. Work* for complainants.

William F. Peter for Chicago, Terre Haute & Southeastern Railway Company and Illinois Central Railroad Company.

Perry McCart for Chicago, Indianapolis & Louisville Railway Company.

S. L. Strauss for Grand Trunk Railway Company of Canada and Grand Trunk Western Railway Company.

Walter A. Dunnett for Canadian Pacific Railway Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainants are corporations, partnerships, and individuals engaged in the stone contracting business at Toronto and Hamilton, Canada. By complaint, filed February 19, 1916, they allege that defendants' rates on rough sawed stone and rough stone from Bedford, Ind., and adjacent points taking the same rate, to Toronto and Hamilton are unreasonable to the extent that they exceed the sixth-class rates contemporaneously applicable from and to the same points. Reparation is asked on shipments made within two years prior to the filing of the complaint. Rates are stated in cents per 100 pounds.

During a portion of the period involved the commodity rates on rough sawed and rough stone from the Bedford district were 20 cents to Toronto and 18 cents to Hamilton. These rates were increased to 21 cents and 18.9 cents, respectively, following *The Five Per Cent Case*, 31 I. C. C., 351; 32 I. C. C., 325. The increased rates are still in effect. In the absence of commodity rates rough sawed and rough stone would move from and to the points involved at the sixth-class rates. Prior to the increase authorized in *The Five Per Cent Case*, *supra*, the sixth-class rates from the Bedford district were 17 cents to Toronto and 15 cents to Hamilton.

Subsequent to that time, and at present, the sixth-class rates were and are 17.9 cents and 15.8 cents, respectively.

The Bedford district, which is approximately 75 miles long and 15 miles wide, extends north and south along the Chicago, Indianapolis & Louisville Railway, hereinafter called the Monon, and east and west along the Chicago, Terre Haute & Southeastern Railway, hereinafter called the Southeastern. The lines of the carriers named intersect at Bedford, which is located approximately in the center of the district. The average distance via all routes from the Bedford district to Toronto is 659 miles; to Hamilton, 630 miles. The testimony with respect to the loading of rough sawed and rough stone is somewhat conflicting, but it would appear that a fair average carload is approximately 82,000 pounds, upon basis of which the 21-cent rate to Toronto yields 6.37 mills per ton-mile and 26.1 cents per car-mile; the 18.9-cent rate to Hamilton, 6 mills per ton-mile and 24.6 cents per car-mile.

Complainants rely principally upon the fact that the commodity rates exceed the sixth-class rates. They cited commodity rates from a few stone-producing points in Missouri, Minnesota, Ohio, and Kentucky to various destinations which were lower than the sixth-class rates, but admitted that these rates were practically paper rates. They also mentioned several points in central freight association territory to which it was stated the commodity rates on stone from the Bedford district were somewhat lower than the sixth-class rates. Complainants testified that defendants maintained to Toronto and Hamilton the same rates on rough stone as on finished stone. They contend that as finished stone is more valuable than rough stone the rates on rough stone should be reduced.

Defendants observe that the charging of commodity rates higher than the sixth-class rates on stone from the Bedford district is due to the service rendered by the carriers in connection with the stone traffic prior to the arrival of the shipments at the billing stations and the beginning of the line haul, which service is not necessary in connection with commodities ordinarily taking the sixth-class rates. The Bedford district is situated in a hilly country, which presents difficult operating conditions. The quarries are not located on the carriers' main lines, but are at points reached by spurs owned by the carriers, some of which are 8 miles long. The stone is loaded on cars at the quarries and is switched to mills in the Bedford district where it is rough sawed or scabbled. The carriers charge $2 per car for this switching service. The stone is then reloaded and switched to the billing station, where its transportation out of the Bedford district begins. It was stated by defendants that this service in the Bedford

district involved on an average 10 miles of transportation, and that frequently back hauls were necessary. The carriers maintain at yards in the Bedford district a supply of flat cars used in the transportation of stone, so that they may be immediately available when needed. No charge is assessed for this detention, although the average detention per car is 15 days. The Monon has eight locomotives and the Southeastern three that are engaged solely in switching cars in connection with the stone business in the district involved. With the exception of the $2 switching charge above referred to, the carriers receive no compensation in addition to the transportation rate for these services.

At the inception of the stone business in the Bedford district the quarries were served by independent short lines of railroad which charged 3 cents for their service prior to delivery of the shipments to the line-haul carriers. Subsequently these independent lines were absorbed by the line-haul carriers and the rates which were formerly received by the independent lines were added to the through rates. The same basis was observed in connection with shipments moving over spurs subsequently constructed by the line-haul carriers. Defendants observe that stone generally moves on commodity rates and that class rates have never been observed as maxima in connection with that traffic. To eastern trunk line territory stone rates from the Bedford district are uniformly higher than the sixth-class rates. Defendants stated that except for the 5 per cent increase the same rates have been maintained to trunk line territory for 27 years, and that the same is true as to the rates to Hamilton and Toronto for the past 15 years, or since joint rates were first established to these points. It is shown that the volume of the stone traffic from the Bedford district has greatly increased under these rates. Defendants asserted that the rates on stone from that district to central freight association territory are generally higher than the sixth-class rates although the difference is not as great as between the class and commodity rates to trunk line territory and to Hamilton and Toronto. Defendants compared the rates attacked with those applicable on stone from the Bedford district to trunk line territory, to the southeast, and to Mississippi and Missouri river crossings. They also stated that the stone business was seasonal, there being practically no movement during four months in winter, and that there was a 100 per cent empty return movement of the equipment used in this traffic.

We find that the rates assailed are not shown to have been or to be unreasonable, and an order dismissing the complaint will be entered.

No. 7688.

CHAPIN & COMPANY

v.

CHICAGO, INDIANAPOLIS & LOUISVILLE RAILWAY COMPANY ET AL.

Submitted October 19, 1916. Decided April 28, 1917.

Former finding that the rates on distillers' dried grain in carloads from Louisville, Ky., and corn oil meal and corn oil cake, in carloads, from Indianapolis, Ind., to eastern destinations, manufactured into mixed feed at Hammond, Ind., were not shown to have been unreasonable, affirmed on rehearing. Complaint dismissed.

Cassoday, Butler, Lamb & Foster; C. R. Hillyer; and *K. D. Loos* for complainant.

A. C. Tumy for Chicago, Indianapolis & Louisville Railway Company.

George A. Kelly and *James Webster* for all defendants.

REPORT OF THE COMMISSION ON REHEARING.

BY THE COMMISSION:

Our original report herein appears in 38 I. C. C., 611. The complaint alleged that unreasonable rates were charged by defendants for the transportation of 41 carloads of distillers' dried grain from Louisville, Ky., and 68 carloads of corn oil meal and corn oil cake from Indianapolis, Ind., to various points in Pennsylvania, New York, New Jersey, and New England, manufactured into mixed live-stock feed at Hammond, Ind., during the period from October, 1911, to December, 1913. Reparation was asked. We found that the rates charged were not shown to be unreasonable, and an order dismissing the complaint was entered. On July 6, 1916, the case was reopened at complainant's request for further hearing, which has been had, and the case is now before us on the whole record. The principal defendant, the Chicago, Indianapolis & Louisville Railway, will be hereinafter called the Monon.

On rehearing complainant offered no material testimony, its counsel stating that the record already contained the essential facts. In addition, however, complainant contends that an increase in rates since January 1, 1910, is involved, and that, therefore, the burden of justifying their reasonableness is upon the defendants.

Prior to March 1, 1911, the Monon's tariff publishing the through rates in issue contained the following rule:

All other charges and any rules or regulations that may in any wise change, affect, or determine any part of the aggregate of the rates named herein, as well as any privileges or facilities granted or allowed on traffic handled between points on this company's lines, are published and filed according to law. When traffic is destined to a point beyond the tracks of this company, such charges, rules, and regulations as are published and lawfully on file with the Interstate Commerce Commission by the delivering road, which is a party to this tariff, will govern.

On March 1, 1911, a provision was established making all milling-in-transit rules inapplicable on corn oil meal, corn oil cake, distillers' dried grain, and various feeds and other by-products of grain and seeds, in straight carloads or combined to make feed of any kind. Prior to March 1, 1911, and also at the time these shipments moved, the milling-in-transit tariffs referred to by complainant authorized transit services at Hammond in connection with the through rates, but complainant's shipments were destined to points beyond the tracks of the Monon, and the carriers which reach the destinations involved, with the possible exception of one point to which only one shipment moved, were not parties to the transit tariffs in question. Consequently complainant's allegation that an increase in rates since January 1, 1910, is involved is not sustained.

The complaint names as defendants only the Monon, Indiana Harbor Belt, and Michigan Central railroads, whereas the shipments moved to eastern points on the lines of other carriers which were parties to the rates applied beyond Hammond and to the through rates sought. The facts submitted of record are insufficient to support a finding that the rates assailed were unreasonable.

We find upon all the facts now before us that our previous findings were not erroneous, and they are, therefore, affirmed. An order dismissing the complaint will be entered.

44 I. C. C.

No. 8689.

PRAIRIE OIL & GAS COMPANY

v.

ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY ET AL.

Submitted May 3, 1916. Decided April 28, 1917.

Through rate on lumber, in carloads, from Bridgeport, Ill., to Ramona, Okla., found unreasonable to the extent that the component of the rate charged for the haul from St. Louis, Mo., to Ramona exceeded the rate subsequently established over the route of movement and now in effect. Reparation awarded.

E. H. Hogueland for complainant.

J. B. Coffey, *F. E. Andrews*, and *J. C. Burnett* for Atchison, Topeka & Santa Fe Railway Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the oil and gas business, with its principal office at Independence, Kans. By complaint, filed February 28, 1916, it alleges that the rate of 37.5 cents per 100 pounds charged by defendants for the transportation of nine carloads of lumber from Bridgeport, Ill., to Ramona, Okla., during the period from July 23, 1914, to October 19, 1914, inclusive, was unreasonable and unjustly discriminatory to the extent that it exceeded a rate of 30 cents per 100 pounds, and in violation of the fourth section of the act in that it exceeded the aggregate of intermediate rates to and from St. Louis, Mo. Reparation is asked. Rates are stated in cents per 100 pounds.

The rate on lumber between the points involved is based on St. Louis. The shipments were consigned to complainant at Ramona and moved as routed by the shipper: Baltimore & Ohio Southwestern Railroad to St. Louis; Wabash Railroad, hereinafter called the Wabash, to Lexington Junction, Mo.; Atchison, Topeka & Santa Fe Railway, hereinafter called the Santa Fe, through Kansas City, Mo., to destination. The shipments aggregated 710,600 pounds, and freight charges were ultimately collected thereon in the sum of $2,664.75 on basis of the legally applicable combination rate of 37.5 cents, composed of 7 cents to St. Louis, 11.5 cents to Lexington Junction, 5 cents to Kansas City, and 14 cents beyond. Complainant's

attack is directed specifically against the charges west of St. Louis. There was contemporaneously in effect from and to the points involved a combination rate of 30 cents, composed of the 7-cent rate to St. Louis and a 23-cent rate thence over the Wabash to Kansas City and the Santa Fe beyond. No violation of the fourth section is presented as the 23-cent rate from St. Louis did not then apply over the route the shipments moved. Effective January 1, 1915, the 23-cent rate was established by way of the Wabash to Lexington Junction and the Santa Fe beyond.

It appears that Lexington Junction is a usual and ordinary junction for delivery from the Wabash to the Santa Fe, and that it is the general practice of those carriers to maintain through rates from St. Louis to Oklahoma points by way of Lexington Junction not in excess of those applicable by way of Kansas City. The Wabash and Santa Fe expressed willingness on the special docket to make reparation on basis of the rate asked, admitting that the charges assessed were unreasonable. At the hearing the Santa Fe, the only defendant represented, made the same admission and expressed willingness to make reparation accordingly.

We find that the rate assailed was unreasonable to the extent that the component of the rate charged for the transportation from St. Louis to Ramona exceeded 23 cents per 100 pounds; that complainant made the shipments as described and paid and bore charges thereon; that it has been damaged to the extent of the difference between the charges paid and the charges that would have accrued at the rate herein found to have been reasonable and that it is entitled to reparation from the Wabash Railway Company and the Atchison, Topeka & Santa Fe Railway Company in the sum of $532.95, with interest.

An order will be entered awarding reparation, but as the rate found reasonable has been in effect for more than a year, no order for the future is necessary.

No. 8674.

CROWN COLUMBIA PAPER COMPANY

v.

PENNSYLVANIA RAILROAD COMPANY ET AL.

Submitted July 5, 1916. Decided April 28, 1917.

Charges on three carloads of machinery and machines from Philadelphia, Pa., to Camas, Wash., not shown to have been unreasonable. Complaint dismissed.

Thomas J. Nestor for complainant.
Charles Franklin for defendants.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the manufacture of paper, with its principal office at San Francisco, Cal. By complaint, filed February 23, 1916, it alleges that the charges collected by defendants for the transportation of three carloads of machinery and machines, from Philadelphia, Pa., to Camas, Wash., July 11, 1913, were unreasonable to the extent that they exceeded charges that would have accrued based on a minimum weight of 14,000 pounds. Reparation is asked. The claim was presented to the Commission informally June 18, 1915.

Without specifying the size desired, the consignor requested the initial carrier to furnish three cars for the transportation of the shipments, and executed therefor three bills of lading. Two of the cars furnished were loaded with bag machines, crated, and machinery and parts, boxed; the third with bag machines, crated. The first car, 40 feet long, contained 17,000 pounds; the others, 36 feet long, contained 13,500 pounds and 8,650 pounds, respectively. The shipments moved by way of Pennsylvania lines, Chicago Great Western Railroad, Great Northern and Spokane, Portland & Seattle railways. Charges were collected on the first car at the published commodity rate of $1.55 per 100 pounds, based upon a minimum of 30,000 pounds; on the second and third at the second-class rate of $3.20 per 100 pounds, governed by the western classification, applicable to shipments in less than carloads. The application of the second-class rate resulted in less total charges on the latter two cars than would have accrued at the carload rate and minimum weight. No complaint is made of

the measure of the rates charged, and the correctness of the billed weights is conceded.

September 2, 1912, the minimum was increased from 24,000 to 30,000 pounds. Complainant maintains that it is impossible to load 30,000 pounds of bag machines, machinery and parts into a standard car, and that the present minimum is excessive to the extent that it exceeds 14,000 pounds for cars 36 feet in length, with minima for cars of other sizes decreasing and increasing in proportion to actual lengths of cars. Its only witness was the shipper's traffic manager, who had no personal knowledge of the facts relative to the shipments or the manner in which they were loaded. He testified, however, that the shipments were loaded as compactly as possible, without attempting to top load because of the likelihood of damage in transit. He thought 24,000 pounds could be loaded in a 50-foot car, and compared minimum weights ranging from 16,000 pounds to 24,000 pounds applicable on furniture, agricultural implements, chairs, glass and glassware, lamps and fixtures, refrigerators, sewing machines, and stoves, between the points in controversy, but knew of no article analogous to the commodities in controversy upon which a $1.55 rate, minimum 14,000 pounds, applied.

Defendants insist that the 30,000-pound minimum can be conveniently loaded; that it is reasonable in comparison with minima applicable to comparable articles moving between the same points; that under the tariffs in effect the shipper could have utilized one large car, loaded the excess above 30,000 pounds into another car as a "follow lot," and forwarded the whole as a single shipment, under one bill of lading, at the carload rate; that the application of the present carload rate and proposed minimum would yield a car-mile revenue of approximately 6.8 cents for the haul of about 3,170 miles, and would be unremunerative; and that there should be no reduction in the minimum weight without a corresponding increase in the rate. The rate and minimum in issue apply to a variety of machines and machinery in straight or mixed carloads.

Upon the facts disclosed we are of opinion and find that the minimum in question applied in connection with the commodity rate, and the charges collected thereunder, are not unreasonable. An order dismissing the complaint will be entered.

No. 8651.

LA CROSSE SHIPPERS' ASSOCIATION
v.
CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY ET AL.

Submitted September 25, 1916. Decided April 28, 1917.

Rate on beer in carloads from La Crosse, Wis., to Sioux Falls, S. Dak., found unduly prejudicial as compared with the rates contemporaneously in effect on the same commodity from Milwaukee, Wis., and St. Louis, Mo., to the same destination. A proper relationship of rates prescribed for the future.

S. J. Bolton and *W. W. West* for complainant.

O. W. Dynes and *J. N. Davis* for Chicago, Milwaukee & St. Paul Railway Company.

R. B. Scott and *K. L. Burgess* for Chicago, Burlington & Quincy Railroad Company.

C. C. Wright and *Robert H. Widdecombe* for Chicago & North Western Railway Company.

Report of the Commission.

By the Commission:

Complainant is a corporation composed of shippers and manufacturers at La Crosse, Wis. By complaint, filed February 12, 1916, as amended, it alleges that defendant's rate for the transportation of beer, in carloads, from La Crosse to Sioux Falls, S. Dak., is unreasonable, unjustly discriminatory, and unduly prejudicial. The establishment of a reasonable and nondiscriminatory rate for the future is asked. Rates are stated in cents per 100 pounds.

The rate applicable on beer in carloads from La Crosse to Sioux Falls is the fifth-class rate of 20 cents. A rate of 15 cents is asked. A commodity rate of 15 cents was in effect on beer, in carloads, from La Crosse to Sioux Falls during a period of about 10 years prior to September 8, 1914, when the 20-cent rate became effective as a result of our finding in *Beer and Other Malt Products*, 31 I. C. C., 544. Complainant's evidence in support of the allegation of unreasonableness consisted of little more than a reiteration of the facts adduced in the case cited. In fact, complainant admitted that there had been no substantial change in the transportation conditions surrounding this traffic since the decision of that case.

Complainant's principal contention is that the 20-cent fifth-class rate is unduly prejudicial to its members and unduly preferential of shippers in Milwaukee and St. Louis, at which latter points competitors of complainant's members are located. For a number of years and at the present time commodity rates of 23 cents applied and apply on beer in carloads from Milwaukee and St. Louis to Sioux Falls, which rates are 5 cents lower than the fifth-class rates and equivalent to class C rates from and to the same points. Sioux Falls is 321 miles from La Crosse by way of the Chicago & North Western Railway and its connections and 348 miles by way of the Chicago, Milwaukee & St. Paul Railway; from Milwaukee, 515 miles by way of the Chicago & North Western and 496 miles by way of the Chicago, Milwaukee & St. Paul; and from St. Louis, 570 miles by way of the Chicago, Burlington & Quincy Railroad and Chicago, Rock Island & Pacific Railway.

Shipments of beer to Sioux Falls from La Crosse and Milwaukee by way of the Chicago & North Western traverse the same route from La Crosse to Sioux Falls. By way of the Chicago, Milwaukee & St. Paul, the short line from Milwaukee to Sioux Falls is through North McGregor, Iowa; shipments from La Crosse move through Austin, Minn., and Mason City, Iowa, and shipments from both points move over the same route for a distance of about 200 miles.

Complainant urges that the 3-cent difference between the rates on beer to Sioux Falls from La Crosse, on the one hand, and from Milwaukee and St. Louis, on the other, partially deprives La Crosse of the advantage growing out of its closer proximity to Sioux Falls; that on supplies from the east its members are required to pay rates that are substantially higher than the rates that are paid by beer shippers at Milwaukee and St. Louis; and that therefore the commodity rates on beer from La Crosse and from Milwaukee and St. Louis to Sioux Falls should bear the same relation to each other as do the fifth-class rates from and to the same points.

Defendants explain that the rate from Milwaukee and St. Louis to Sioux Falls is established on the basis of 104 per cent of the Chicago-Missouri River rate in accordance with our opinion in *Daniels* v. *C., R. I. & P. Ry. Co.*, 6 I. C. C., 458; that the 22-cent rate from Chicago to the Missouri River is on the basis of 5 cents higher than the St. Louis-Kansas City rate of 17 cents; and that the last-named rate was established by carriers having no voice in the rates from La Crosse to Sioux Falls.

Beer moves generally in western classification territory at fifth-class rates, and defendants stated that Sioux Falls is the only point in South Dakota to which the rates on beer from Milwaukee and St. Louis are lower than fifth class.

We find that the rate assailed is not shown to be unreasonable but that it is, and for the future will be, unduly prejudical to the extent that it exceeds and may exceed a rate 6.5 cents less than the rates contemporaneously in effect on beer in carloads from Milwaukee and St. Louis to Sioux Falls. An order will be entered accordingly.

No. 8667.

HASKELL MANUFACTURING COMPANY ET AL.

v.

NEW YORK, NEW HAVEN & HARTFORD RAILROAD COMPANY ET AL.

PORTION OF FOURTH SECTION APPLICATION No. 775.

Submitted September 16, 1916. Decided April 28, 1917.

Charges on certain shipments of iron and steel articles between Pawtucket, Darlington, and Valley Falls, R. I., and points in Connecticut and Massachusetts found to have been unreasonable. Reparation awarded.

Thomas P. Corcoran for complainants.

Nathaniel W. Smith for defendants.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainants are Haskell Manufacturing Company, Standard Nut & Bolt Company, Stephans Nut & Bolt Company, and J. D. Crosby Company, corporations, engaged in the manufacture of iron and steel articles at Pawtucket, R. I. By complaint, filed February 19, 1916, as amended, they allege that unreasonable and unjustly discriminatory rates were charged on certain carload and less-than-carload shipments of hoop and band steel, iron and steel wire, and iron bolts and nuts, shipped from Pawtucket, Darlington, and Valley Falls, R. I., to points in Connecticut and Massachusetts during the period from February 20, 1915, to October 8, 1915, both dates inclusive. A violation of the long-and-short-haul rule of section 4 of the act is also alleged. Reparation is asked.

The points of origin and destination are located on the New York, New Haven & Hartford Railroad, hereinafter called the New Haven,

except Hopedale, Mass., which is located on the Grafton & Upton Railroad, and South Manchester, Conn., which is located on the South Manchester Railroad.

For a number of years prior to February 20, 1915, the New Haven, under exceptions to the official classification, which governs, applied to shipments of iron and steel articles, in the territory involved, fifth and sixth class rates on less-than-carload and carload quantities, respectively. On February 20, 1915, these exceptions were canceled, and the official classification ratings of fourth class, less than carload, and fifth class, carload, thereby became applicable. Effective October 9, 1915, the New Haven established a distance scale of commodity rates, practically on a level with the rates in effect prior to February 20, 1915. These latter rates are still in effect, and have proved satisfactory to complainants generally.

Complainants show that the adjustment of rates on February 20, 1915, resulted in increases ranging from 1 cent to 6 cents per 100 pounds; and that contemporaneously with the movement of the shipments here involved defendants applied lower rates for corresponding distances on analogous articles. The allegation of unjust discrimination is not sustained of record.

As the rates assailed represent increases since January 1, 1910, the burden of justifying their reasonableness rests upon defendants. Defendants state that the exceptions to the classification were withdrawn when it was learned that rates thereunder were lower in many instances than specific commodity rates. They contend that the former rates were unremunerative; that on account of a revision of the fourth-class and fifth-class rates applicable on less-than-carload and carload shipments, respectively, which followed the cancellation of the exceptions, charges resulted which were in many instances lower than those which accrued under the former respective fifth and sixth class rates; and that in view of these compensating advantages the adjustment, on the whole, was fair and reasonable to all concerned. That the rates in effect prior to February 20, 1915, were actually unremunerative is not indicated by the record, and the other contentions of defendants do not show the increased charges collected on complainants' shipments to have been just and reasonable. As a matter of fact, a willingness to pay reparation was evidenced.

There was set for hearing in connection with this case that portion of Fourth Section Application No. 775, filed by the New Haven, wherein authority is sought to continue to charge on iron and steel articles, carloads or less than carloads, from Mansfield, Mass., or farther distant points of origin, to East Haven, Conn., or other points of destination, rates which are lower than rates contemporaneously maintained on like traffic from Pawtucket, R. I., to the

same points of destination. These departures from the long-and-short-haul rule of the fourth section were removed prior to the filing of this complaint by the establishment of the distance scale of commodity rates above referred to.

We find that the charges collected on the shipments involved were unreasonable to the extent that they exceeded those which would have accrued on basis of the rates in effect prior to February 20, 1915; that complainants made the shipments as described and paid and bore the charges thereon at the rates herein found to have been unreasonable; that they have been damaged to the extent that the charges paid exceeded those which would have accrued on basis of the rates in effect prior to February 20, 1915, and are entitled to reparation, with interest, on shipments made by them during the period from February 20, 1915, to October 8, 1915, both dates inclusive. Statements of shipments filed by complainants are inaccurate in so far as they include shipments to intrastate destinations and shipments made subsequently to October 8, 1915. If charges were collected in excess of those legally applicable on and after October 9, 1915, the overcharges should be refunded. In order to determine the exact amount of reparation due under our findings herein, it will be necessary for complainants to prepare revised statements in accordance with rule V of the Rules of Practice, covering the shipments upon which they paid and bore the charges and claim reparation. Upon receipt of the revised statements, verified by defendants, we will consider entering an order awarding reparation. As the present rates, which have been in effect for more than a year, are substantially on a level with the rates which were in effect prior to February 20, 1915, no order for the future is necessary.

No. 8791.

NATIONAL PICKLE & CANNING COMPANY

v.

PERE MARQUETTE RAILROAD COMPANY ET AL.

PORTION OF FOURTH SECTION APPLICATION No. 2060.

Submitted July 12, 1916. Decided April 28, 1917.

Claim for reparation on a carload of pickles, shipped from West Olive, Mich., to Chicago, Ill., dismissed for want of prosecution.

No appearance for complainant.
R. P. Paterson for defendant.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the pickle and vinegar business, with an office at Chicago, Ill. By complaint, filed April 5, 1916, it alleges that defendant's rate of 12 cents per 100 pounds charged for the transportation of a carload of pickles shipped August 21, 1913, from West Olive, Mich., to Chicago was unreasonable, unjustly discriminatory, and in violation of the long-and-short-haul rule of the fourth section in that it exceeded a rate of 9 cents per 100 pounds contemporaneously applicable from Muskegon, Mich., a farther distant point. Reparation is asked. The claim was presented to the Commission informally August 7, 1915. That portion of Fourth Section Application No. 2060 of J. F. Tucker, agent, in which authority is sought to continue rates on pickles in carloads from Muskegon to Chicago which are lower than the rates contemporaneously applicable on like traffic from West Olive and other intermediate points, was heard with the complaint.

The rate assailed was the fifth-class rate. On October 26, 1914, subsequently to the time the shipment moved, the fifth-class rate from West Olive to Chicago was increased to 12.6 cents, following *The Five Per Cent Case*, 31 I. C. C., 351. At the same time the ate from Muskegon to Chicago, which was a commodity rate, was ıcreased to 10 cents. Defendant's tariff publishing these rates pro-ided and provides, conformably to rule 77 of Tariff Circular 18-A, or the publication, upon reasonable request therefor, of rates from any intermediate point not exceeding those from more distant points.

This is a substantial compliance with the requirements of the fourth section. *Kosse, Shoe & Schleyer Co.* v. *C., C., C. & St. L. Ry. Co.*, 41 I. C. C., 602.

Complainant did not appear at the hearing and no evidence was offered in its behalf. The complaint will be dismissed for want of prosecution.

No. 8697.

SCOTT PAPER COMPANY

v.

ATLANTIC CITY RAILROAD COMPANY ET AL.

PORTIONS OF FOURTH SECTION APPLICATION No. 1774.

Submitted September 23, 1916. Decided April 28, 1917.

Rates charged for the transportation of toilet paper in less than carloads from Chester, Pa., to Hammonton and other points in New Jersey, found to have been unreasonable to the extent that they exceeded the aggregates of the intermediate rates. Reparation awarded.

Clement R. Clements for complainant.

Frederic L. Ballard for Pennsylvania Railroad Company; Philadelphia, Baltimore & Washington Railroad Company; and West Jersey & Seashore Railroad Company.

William L. Kinter for Atlantic City Railroad Company, Chester & Delaware River Railroad Company, Philadelphia & Reading Railway Company, and Central Railroad Company of New Jersey.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the manufacture of toilet paper and paper towels at Chester and Philadelphia, Pa. By complaint, filed March 1, 1916, as amended, it alleges that the rates charged by defendants for the transportation of toilet paper shipped from Chester to Hammonton and other points in New Jersey, during the period from March 1, 1914, to February 29, 1916, inclusive, were unreasonable and in violation of the fourth section in that they exceeded the aggregates of the intermediate rates to and from Paschall and Gibson's Point, Pa. Reparation is asked. Those portions of

Fourth Section Application No. 1774 of C. C. McCain, agent, in which authority is sought to continue to charge a greater compensation for the transportation of toilet paper from Chester to Hammonton and other points on defendants' lines in New Jersey, as a through route, than the aggregates of the intermediate rates to and from Paschall or Gibson's Point, were set for hearing with the complaint. Rates are stated in cents per 100 pounds.

Chester is on the Philadelphia, Baltimore & Washington, Chester & Delaware River (affiliated with the Philadelphia & Reading Railway), and Baltimore & Ohio railroads. The destination points are on the Pennsylvania, Atlantic City, and West Jersey & Seashore railroads, and Central Railroad of New Jersey. Paschall is intermediate to Hammonton from Chester over the Pennsylvania, and Gibson's Point is intermediate thereto over the Philadelphia & Reading. Hammonton will be used as a representative destination.

The official classification rates toilet paper fifth class in carloads and third class in less than carloads. Prior to February 23, 1915, and as early as 1899, the through class rates on toilet paper from Chester to Hammonton were 13 cents in carloads and 20 cents in less than carloads. Effective February 23, 1915, following our decisions in *The Five Per Cent Case*, 31 I. C. C., 351; 32 I. C. C., 325, these rates were increased to 13.7 cents and 21 cents, respectively, the present rates. Prior to February 15, 1916, the combination fifth-class rates to Hammonton, based on Paschall and Gibson's Point, were 14.8 cents and 13.7 cents, respectively, and the combination third-class rates were 17.9 cents and 16.9 cents, respectively. Effective February 15, 1916, prior to the filing of the complaint in this case, the combination fifth-class rates to Hammonton, based on Paschall or Gibson's Point, were increased to 17.9 cents, and the third-class rates to 22.1 cents, thereby making the aggregates of the intermediate third-class rates higher than the through class rates from Chester. The correction of the fourth section departure renders any finding with respect to it unnecessary. Corresponding changes were contemporaneously made in the combination rates to the various destinations in controversy. No change was made in the through rates. An inspection of the tariffs on file with the Commission discloses that the through fifth-class rates from and to the points in controversy were not and are not in excess of the aggregate of the intermediate rates based on Paschall or Gibson's Point.

Complainant made numerous less-than-carload shipments over defendants' lines prior to the date on which the combination rates were increased, some of which moved through Paschall and others through Gibson's Point. The shipments were sold f. o. b. destination. Charges thereon were collected from the consignees on the

basis of the through class rates from Chester, legally applicable, and were deducted by the consignees from complainant's invoices. The complaint does not attack the rates charged as inherently unreasonable, nor does the record disclose any objection to the present rates. The case rests solely upon the departures from the rule of the fourth section.

We find that the rates charged on the shipments in question were unreasonable to the extent that they exceeded the aggregates of the intermediate rates contemporaneously in effect to and from Paschall or Gibson's Point; that complainant made the shipments as described and paid and bore charges thereon at the rates herein found to have been unreasonable; that it has been damaged to the extent that the charges collected exceeded the charges that would have accrued on basis of the rates herein found to have been reasonable; and that it is entitled to reparation, with interest. The exact amount of reparation due can not be determined on this record, and complainant should prepare a statement showing the details of the shipments in accordance with rule V of the Rules of Practice, which statement should be submitted to defendants for verification. Upon receipt of a statement so prepared and verified we shall consider the entry of an order awarding reparation.

No. 9347.

CHAMBER OF COMMERCE OF LA CROSSE ET AL.

v.

GREAT LAKES TRANSIT CORPORATION ET AL.

Submitted April 20, 1917. Decided May 1, 1917.

Rail-and-lake rates on interstate traffic from trunk line territory and from Buffalo, N. Y., Erie, Pa., and Detroit, Mich., to La Crosse, Wis., and Winona and Red Wing, Minn., by way of the Great Lakes Transit Corporation, found to be unduly prejudicial. Defendants required to establish joint through rail-lake-and-rail and lake-and-rail rates from and to the points involved that shall not exceed the rail-lake-and-rail and lake-and-rail rates contemporaneously maintained on like traffic from the same points to St. Paul and Minneapolis, Minn.

S. J. Bolton and *W. W. West* for complainants.

Isaac H. Mayer and *F. A. Stanley* for Great Lakes Transit Corporation.

REPORT OF THE COMMISSION.

DANIELS, *Commissioner:*

Complainants, civic organizations of La Crosse, Wis., and Winona, Minn., and two manufacturers of Red Wing, Minn., by their complaint, filed November 24, 1916, as amended, allege that defendants' class and commodity rail-lake-and-rail and lake-and-rail rates from points in trunk line territory and from Buffalo, N. Y., Erie, Pa., and Detroit, Mich., to La Crosse, Winona, and Red Wing are unreasonable and unduly prejudicial to the extent that they exceed the corresponding class and commodity rates from the same points of origin to St. Paul and Minneapolis, Minn., hereinafter called the twin cities. An order is asked requiring defendants to establish joint through rail-lake-and-rail and lake-and-rail rates from and to the points in question not in excess of those contemporaneously maintained to the twin cities. The allegation of unreasonableness is merely perfunctory. What complainants really seek is to be placed on a rate parity with the twin cities.

La Crosse, Winona, and Red Wing are located 196, 221, and 284 miles, respectively, west of Milwaukee, Wis., and 129, 102, and 40 miles, respectively, south of St. Paul. La Crosse is served by the Chicago & North Western, Chicago, Burlington & Quincy, and Green Bay & Western railroads, and the Chicago, Milwaukee & St. Paul Railway; Winona by the same carriers and also by the Chicago

Great Western Railroad; and Red Wing by the Chicago, Milwaukee & St. Paul and Chicago Great Western. Prior to the year 1916, the Erie & Western Transportation Company, the Western Transit Company, the Mutual Transit Company, the Erie Railroad Lake line, the Lackawanna Transportation Company, and the Rutland Transit Company, in connection with defendant rail carriers, maintained joint through rail-lake-and-rail and lake-and-rail rates from the territory of origin in question to the complaining cities by way of the Lake Michigan ports, Chicago and Milwaukee, which were the same as the rates contemporaneously maintained by them to the twin cities by way of Duluth, Minn., and also by way of the Lake Michigan ports. Following the divorcement of these water lines from their owning rail lines under the Panama Canal act, the defendant Great Lakes Transit Corporation, hereinafter called the transit corporation, which came into being March 22, 1916, acquired the boats formerly operated by certain of the lake lines above named, and during the same year published joint through rates to the twin cities by way of Duluth on the same basis as obtained prior to its existence. No joint rates were established to the complaining cities by way of the transit corporation and its connections, and the combination rates now in effect through the Lake Michigan ports are considerably higher than the joint rates maintained to those points prior to 1916. Joint through rates to the complaining cities the same as to the twin cities still exist by way of the Lehigh Valley Transportation Company and the Canada Atlantic Transit line. However, rates are not named in connection with these lake lines from points served by the New York Central, Pennsylvania, Baltimore & Ohio, or Boston & Albany railroads; from Erie or Detroit; or from most points on the Delaware. Lackawanna & Western, the Erie, or the Rutland railroads.

For many years La Crosse, Winona, and Red Wing have been grouped with the twin cities on rail-lake-and-rail traffic from trunk line territory, and it is conceded in this proceeding that they are entitled to the same rates. The transit corporation, the only defendant represented at the hearing, stated that it and the eastern trunk lines are willing to establish the rates asked by way of Chicago and Milwaukee, the only Lake Michigan ports served by the transit corporation; but that the defendant carriers operating between Chicago and Milwaukee and the twin cities refused to concur in the establishment of the rates asked unless those rates are also established to the twin cities by way of the Lake Michigan ports. This the transit corporation declines to do for the reason that it would result in short hauling the lake line on traffic destined to the twin cities which now moves through Duluth. The record indicates that the real difficulty lies in the fact that the rail carriers west of

Chicago and Milwaukee and the lake line are unable to agree upon divisions.

As illustrative of the present rate situation, complainants show that the first-class rate by way of the transit corporation and connections from New York, a representative point, to La Crosse, is a combination rate of $1.158, composed of 65.8 cents to Chicago (or Milwaukee) and 50 cents beyond; the fifth-class, 44.5 cents, 26.5 cents to Chicago (or Milwaukee) and 18 cents beyond. The joint through first-class rail-lake-and-rail rate to the twin cities from New York is 86.8 cents; the fifth class, 33.5 cents; or a difference in favor of the twin cities of 29 cents on first class and 11 cents on fifth class. The contention made is that the twin cities are unduly preferred and the complaining cities unduly prejudiced to the extent that the combination rail-lake-and-rail and lake-and-rail rates to the latter points exceed the joint through rail-lake-and-rail and lake-and-rail rates to the former. Complainants also observe that subsequent to the filing of their complaint the defendants established joint through rail-lake-and-rail and lake-and-rail rates from trunk line territory to the Mississippi River crossings, Burlington, Clinton, and Dubuque, Iowa, and Rock Island, Ill., on substantially the same basis that existed prior to 1916, plus a 5 per cent increase, and lower than the rates maintained to the complaining cities and, for the most part, lower than the rates sought.

We are of opinion and find that the present combination rail-lake-and-rail and lake-and-rail rates from trunk line territory and Buffalo, N. Y., Erie, Pa., and Detroit, Mich., by way of the Great Lakes Transit Corporation and connections to La Crosse, Wis., and Winona and Red Wing, Minn., are, and for the future will be, unduly prejudicial to the extent that such rates exceed the joint through rail-lake-and-rail and lake-and-rail rates contemporaneously maintained from the same points to St. Paul and Minneapolis, Minn. An order will be entered requiring the defendants to establish joint rail-lake-and-rail and lake-and-rail rates from the points of origin involved to La Crosse, Winona, and Red Wing that shall not exceed the joint through rail-lake-and-rail and lake-and-rail rates contemporaneously maintained by defendants to St. Paul and Minneapolis.

No. 8534.

JOHN P. SQUIRE & COMPANY

v.

ATLANTIC SOUTHERN RAILROAD COMPANY ET AL.

Submitted March 27, 1916. Decided April 28, 1917.

Charges on hogs from Lyman, Iowa, to Calumet Park, Ill., stopped in transit at Valley Junction, Iowa, found to have been unreasonable. Reparation awarded.

Calvin P. Cook for complainant.

No appearances for defendants.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the packing-house business, with its principal office at Boston, Mass. By complaint, filed December 17, 1915, it alleges that the charges collected by defendants on six carloads of hogs shipped from Lyman, Iowa, to Calumet Park, Ill., in February, 1911, were unreasonable. Reparation is asked. The claim was presented to the Commission informally December 20, 1912. Rates are stated in cents per 100 pounds.

The shipments were delivered to the Atlantic Northern & Southern Railway at Lyman, February 10, 1911, consigned to complainant at Calumet Park, and were moved by the initial carrier in six single-deck cars north to Atlantic, Iowa, 16 miles, and thence by the Chicago, Rock Island & Pacific Railway, hereinafter called the Rock Island, to Valley Junction, Iowa, where they were stopped for feeding, watering, and sorting. The hogs were subsequently reloaded into seven single-deck cars and forwarded by the Rock Island to Blue Island, Ill., and by the Indiana Harbor Belt Railroad thence to Calumet Park. The aggregate weight of the shipments into Valley Junction was 106,130 pounds, each of the inbound cars containing more than 17,000 pounds. The aggregate weight outbound was 106,070 pounds, loaded, apparently for the convenience of the shippers, as follows: 16,960 pounds in each of five cars; 16,170 and 5,100, pounds, respectively, in the remaining two cars. Into the latter two cars there were also loaded 790 and 11,860 pounds, respectively, of hogs, consigned to complainant at Calumet Park. These hogs originated at points on the Rock Island in Iowa taking a 23.5-cent carload

rate to Calumet Park and are not involved in the claim for reparation. Charges were collected on the shipments in question in the sum of $320.33, based on a weight of 106,070 pounds, and a supposed combination rate of 30.2 cents, composed of a rate of 6.7 cents to Atlantic and a rate of 23.5 cents beyond. A minimum of 17,000 pounds was applied on each of the seven cars out of Valley Junction and additional charges were collected in the sum of 37 cents, based on a weight of 280 pounds and a charge of 13.2 cents, which charge is equal to the difference between the local rate of 10.3 cents from Atlantic to Valley Junction, and the 23.5-cent component from Atlantic to destination. The tariffs of the Rock Island and the Atlantic Northern & Southern provided that carload shipments of hogs from stations on the Rock Island in Iowa, including Atlantic, and from all stations on the Atlantic, Northern & Southern, destined to points east of the Mississippi River, could be stopped at Valley Junction for the purpose of feeding, watering, sorting, and double-decking, and that the through rate would be protected from original point of shipment to ultimate destination. But these tariffs did not provide for mixing shipments of hogs originating at Lyman with like shipments originating at other points.

At the time of movement the portion of the Atlantic Northern & Southern extending south of Atlantic had been recently constructed and no joint rates in connection with the Rock Island were applicable on interstate traffic. The 6.7-cent component applied for the haul from Lyman to Atlantic apparently was the local distance rate of the Atlantic Northern & Southern for a distance of 16 miles. The local rates of that carrier were not on file with this Commission and its participation in the movement of the traffic in question was without tariff authority. As no rate was specifically applicable it becomes necessary to determine whether the charges collected were reasonable, and if not, what would have been reasonable charges. *Memphis Freight Bureau* v. *K. C. S. Ry. Co.*, 17 I. C. C., 90.

During the period of movement a rate of 23.5 cents applied on hogs in carloads to Calumet Park from Atlantic and all points on the Rock Island in Iowa west of Des Moines, including Valley Junction, to the Missouri River. A joint carload rate of 23.5 cents also applied from Kimballton, Iowa, a station on the Atlantic Northern & Southern 17 miles north of Atlantic. Effective February 23, 1911, 13 days after the shipments moved, the 23.5-cent rate was established from Lyman. In each instance a minimum of 17,000 pounds applied on cars of the dimensions used to transport the shipments here in question.

Defendants were not represented at the hearing, but an application was filed by the Rock Island and the Atlantic Northern & Southern

on our special docket for authority to make reparation to complainant on the basis of the subsequently established joint through rate.

We find that the charges collected were unreasonable to the extent that they exceeded the charges that would have accrued at a rate of 23.5 cents per 100 pounds, minimum 17,000 pounds, based on the weight of the shipments as forwarded from Valley Junction. We further find that complainant made the shipments as described and paid and bore charges thereon in the sum of $320.70; that it has been damaged to the extent of the difference between the charges paid and the charges that would have accrued on the basis herein found to have been reasonable; and that it is entitled to reparation in the sum of $41.05, with interest.

Defendant Atlantic Southern Railroad, which succeeded the Atlantic Northern & Southern Railway in the operation of that portion of the line south of Atlantic, is no longer in existence. The Rock Island observes that collection from the Atlantic Southern is therefore impossible, and urges that the Rock Island should not be required to pay more than its proportion of any reparation that may be awarded. Following our decision in *Riverside Mills* v. *A. & S. S. B. Co.*, 40 I. C. C., 501, in which we held that where a through rate, joint or combination, is found unreasonable and reparation is awarded the order entered runs against the carriers collectively that participated in the transportation, our order for reparation herein will run against all the carriers defendant.

An appropriate order will be entered.

No. 7248.

LA CROSSE SHIPPERS' ASSOCIATION ET AL.

v.

CHICAGO & NORTH WESTERN RAILWAY COMPANY ET AL.

Submitted September 25, 1916. Decided May 1, 1917.

Upon supplemental hearing, allegation that class rates maintained by the Chicago, Milwaukee & St. Paul Railway Company from La Crosse, Wis., to points on its line in the state of Minnesota are unduly prejudicial not sustained. Complaint dismissed.

S. J. Bolton and *W. W. West* for La Crosse Shippers' Association.

O. W. Dynes, *J. N. Davis*, and *C. A. Lahey* for Chicago, Milwaukee & St. Paul Railway Company.

REPORT OF THE COMMISSION ON SUPPLEMENTAL HEARING.

DANIELS, *Commissioner:*

In the original report in this case, 38 I. C. C., 453, the class rates from La Crosse, Wis., to points in the southern half of Minnesota were found not to be unreasonable, but the record was held open in order that complainants might be afforded an opportunity to present a supplemental petition upon the issue of whether or not the rates attacked unjustly discriminate against La Crosse.

A supplemental petition was accordingly filed by one of the original complainants, the La Crosse Shippers' Association, against but one of the original defendants, the Chicago, Milwaukee & St. Paul Railway Company, alleging that the rates from La Crosse to points on the Milwaukee's line in the state of Minnesota are unduly discriminatory as compared with the rates from St. Paul, Minneapolis, and Winona, Minn., Dubuque, Iowa, Chicago, Ill., and Milwaukee, Wis., to the same points. The evidence submitted in support thereof is not materially different from that considered in our former report; those witnesses who testified at the first hearing contented themselves merely with a reiteration at the supplemental hearing of testimony previously offered; the testimony of other witnesses is cumulative; while the exhibits filed are in the nature of a composite of the rate situation as developed at the original hearing. The complainants were put on notice by our disposition of the case on the first hearing that evidence they might subsequently proffer to support the allegation of unjust discrimina-

tion or undue prejudice against La Crosse must be clear, convincing, and definite. A careful analysis of the evidence fails to disclose proof of the character required. Much of it was general and much of it was purely cumulative, and where rates to specific destinations on particular items of traffic were cited the absence of persuasive evidence as to the totality of relative transportation or traffic conditions from other competing points was noticeable. It follows, therefore, that the allegation of unjust discrimination has not been sustained, and an order will be entered dismissing the complaint.

No. 8776.

COFFEYVILLE VITRIFIED BRICK & TILE COMPANY
v.
ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY.

Submitted August 7, 1916. Decided April 28, 1917.

Rate charged on various carloads of brick shipped over an interstate route from Collinsville, Okla., to Stillwater, Okla., not shown to have been unreasonable or otherwise in violation of the act. Complaint dismissed.

Rogers McCray for complainant.
J. P. Wahle for defendant.

Report of the Commission.

By the Commission:

Complainant is a corporation engaged in the manufacture and sale of brick, with a plant at Collinsville, Okla. By complaint, filed April 1, 1916, it alleges that the rate of 7 cents per 100 pounds charged on 53 carloads of brick shipped over an interstate route, from Collinsville to Stillwater, Okla., during the period from August to December, 1912, was unreasonable and unjustly discriminatory to the extent that it exceeded a rate of 5½ cents per 100 pounds. Reparation is asked. The claim was presented to the Commission informally July 16, 1914. Rates are stated in cents per 100 pounds.

The shipments were delivered to the defendant unrouted and moved over its line from Collinsville to Stillwater through Independence and Winfield, Kans., 264 miles. Charges were collected

at the rate of 7 cents, legally applicable. The short-line distance from and to the points in question by way of the Atchison, Topeka & Santa Fe Railway to Tulsa, Okla., St. Louis & San Francisco Railroad to Pawnee, Okla., and Atchison, Topeka & Santa Fe Railway beyond, an intrastate route, is 97.1 miles. The rate contemporaneously applicable over this route was stated to be a combination distance scale rate of 12½ cents. The Corporation Commission of Oklahoma prescribed certain Oklahoma intrastate distance rates on brick in carloads to become effective September 30, 1911, the rate prescribed for a distance of 97.1 miles over two lines being 5½ cents. But these rates were not established until December 30, 1912, their prior establishment having been enjoined at the instance of the interested carriers.

It is not contended that the shipments were misrouted, and no evidence was offered tending to show that the rate over the route of movement was unreasonable *per se*. Complainant's case is based on the assumption that but for the injunction referred to a rate of 5½ cents would have been in effect at the time the shipments moved by way of the short-line route over which the shipments could have moved.

We find that the rate assailed is not shown to have been unreasonable or unjustly discriminatory. The Commission is empowered to award reparation only for violations of the act to regulate commerce. No violation of the act can be predicated upon the particular facts in this case, and an order dismissing the complaint will be entered.

No. 8471.

THOMSON, DIGGS COMPANY ET AL.

v.

ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY ET AL.

Submitted June 30, 1916. Decided April 28, 1917.

1. Rates on animal muzzles and calf weaners, nested, in boxes, in less than carloads from points in Indiana, Illinois, and Ohio to Sacramento, Cal., not shown to have been or to be unreasonable, unjustly discriminatory, or unduly prejudicial.
2. Rates on animal muzzles, nested, in crates, in less than carloads, from Cincinnati, Ohio, and Michigan City, Ind., to Sacramento, Cal., were, are, and for the future will be unreasonable to the extent that they exceeded and may exceed the rates contemporaneously applicable on the same commodity, nested, in boxes. Reparation awarded.

G. J. Bradley for complainants.

R. C. Fyfe for defendants.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainants are corporations engaged in mercantile business at Sacramento, Cal. By complaint, filed November 22, 1915, they allege that the rates charged by defendants on certain less-than-carload shipments of animal muzzles in boxes and crates, and calf weaners in boxes, shipped from La Fayette and Michigan City, Ind., Chicago, Ill., and Cincinnati, Ohio, to Sacramento, Cal., during the period from November 17, 1913, to July 21, 1915, inclusive, were unreasonable, unjustly discriminatory, and unduly prejudicial. Reparation is asked and the establishment of reasonable rates for the future. Rates are stated in cents per 100 pounds, values in amounts per cubic foot, and weights in pounds per cubic foot.

Horse and dog muzzles were included in these shipments. Samples of two varieties of horse muzzles were submitted. One is made of large mesh wire netting attached to a heavy wire ring, and the other of a framework of narrow steel ribs around which wire is wound at intervals of about five-eighths of an inch. They are about 10 inches in diameter and 8 inches deep. The weaners and dog muzzles are smaller. One type of weaner involved is made of wire netting and the other of wire framework with several sharp prongs protruding

therefrom. The dog muzzles are made of wire framework. The shipments, which were nested and packed in boxes or crates, were governed by the western classification, which rated and rates animal muzzles, nested or flat, in boxes, first class, in less than carloads; and calf weaners, in barrels or boxes, second class, in less than carloads. Under a rule of the classification when a rating is published on a commodity in boxes but not in crates the next higher rating will apply when the commodity is shipped in crates. Charges were collected based on the following legally applicable class rates: On the only shipment from Chicago, consisting of muzzles, boxed, first class, $3.40; on all the other shipments of muzzles, boxed, first class, $3.50; on the shipments of muzzles, crated, one and one-half times first class, $5.25; and on the shipments of calf weaners, boxed, second class, $3.03.

Complainants essayed to show that a rating on the commodities involved higher than third class was unreasonable, and that the rates charged were unreasonable to the extent that they exceeded commodity rates on alleged analogous articles. They testified that one of the types of horse muzzles above referred to, nested, weighed 17.68 pounds and the other 28.05 pounds, and that their values were $1.09 and $2.28, respectively. Of two types of weaners one was said to weigh 6.03 pounds, and to be valued at $1.08; the other to weigh 10.87 pounds and to be valued at $2.53. These weights and values were contrasted with the weights and values of the following articles, in rolls, which are rated third class in less than carloads: Poultry netting, 18.18 pounds, $1.04; hardware cloth, 68.57 pounds, $8.23; opal wire cloth, 69.49 pounds, $9.91. The latter two commodities are fine wire netting. Complainants also referred to the third-class rating applicable on less-than-carload shipments of hens' nests, other than trap, k. d., in boxes, bundles, or crates, and on baskets, iron or steel, closely nested. They contend that muzzles may be shipped in bundles without inclosing them in a container and that when so shipped they are no more liable to damage in transit than is wire netting in rolls. None of these shipments moved in bundles, and the rates on muzzles so shipped are not attacked.

Defendants reply that animal muzzles, nested, in boxes, in less than carloads, are rated first class throughout the United States. They contend that the weights and values of the commodities above referred to are not representative of the articles included in the descriptions given, and in support thereof quoted statements from numerous manufacturers of muzzles and wire netting to the effect that muzzles weigh from 8¾ pounds to 14 pounds and are valued at from 45 cents to $6.32; and that some wire netting weighs as much as 80 and 100

pounds, and varies widely in value. Defendants observe that wire hens' nests, which are somewhat similar to the muzzles here involved, are rated first class, set up, in boxes or crates, in less than carloads; and that they weigh from 15 to 18 pounds and range in value from 80 cents to $1. It was testified that the item "iron baskets" referred to by complainants covered heavy bar and band iron baskets. This item has been eliminated from the current classification. Reference was also made to the first-class rating on less-than-carload shipments of wire baskets which are said to be analogous to muzzles. Defendants aver that the second-class rating on weaners, which is also applicable to hardware, was established to apply on flat weaners made of cast iron, but that the weaners here under consideration are similar to muzzles and should properly be rated first class. They disputed the statement that muzzles in bundles would be no more liable to damage than wire netting in rolls, and stated that the classification descriptions and packing requirements were in accordance with the recommendations of the Committee on Uniform Classification. Since the hearing the recommendations of that committee have been amended to include animal muzzles "nested or flat, in barrels, boxes or bundles" in one entry. A rule of the classification provides that when a rating is provided on an article in boxes or bundles but not in crates, that rating will apply to the same article in crates.

Complainants compared the rates on these commodities with less-than-carload commodity rates applicable on wire netting and fencing and animal traps from transcontinental territory to California terminals, which were $1.75 at the time these shipments moved, but were subsequently reduced to $1.50. Defendants observe that these commodity rates were forced by water competition, which does not obtain in connection with the traffic here involved; also that the great majority of animal traps are compact and load heavily, and that the only ones which are analogous to muzzles and calf weaners are wire basket traps, which constitute a very small proportion of the animal traps transported. Wire fencing moves in enormous volume and competes with plain and barbed fence wire and with woven wire and wood fencing, which are relatively cheap articles.

There is no competition between muzzles or weaners and any of the other articles referred to by complainants, and no evidence of unjust discrimination or undue prejudice was adduced.

We find that the rates charged on all the above-described shipments except the muzzles in crates are not shown to have been or to be unreasonable, unjustly discriminatory, or unduly prejudicial; but that the rates assessed on the shipments of muzzles in crates were, are, and for the future will be unreasonable to the extent that they exceeded

and may exceed the rates contemporaneously applicable from and to the same points on less-than-carload shipments of animal muzzles, nested, in boxes.

There were two shipments of muzzles in crates that moved over defendants' lines: One from Cincinnati to the Thomson, Diggs Company, on March 27, 1914, and the other from Michigan City to A. A. Van Voorhies & Company, on April 15, 1915. The weights of each was 210 pounds, and charges were collected in the sum of $11.02 on the shipment to the Thomson, Diggs Company, and $11.03 on the one to A. A. Van Voorhies & Company.

Certain freight allowances were made to complainants on these shipments by the consignors. The record is clear, however, that complainants paid the freight charges as such, and we will not go into the matter of these allowances between the parties. *Sanford-Day Iron Works* v. *L. & N. R. R. Co.*, 41 I. C. C., 10. In addition to the allowances above referred to the consignor of the shipment to the Thomson, Diggs Company refunded to that company $2.15 to reimburse it for additional freight charges which resulted from the consignor's error in shipping the muzzles in crates instead of boxes. But the difference between the charges collected and those which would have accrued had the shipment been in boxes was $3.67; and it appears, therefore, that the charges finally borne by the Thomson, Diggs Company on the shipment in question exceeded by $1.52 the charges which would have accrued had it been boxed. We find that complainants have been damaged to the extent of the difference between the charges paid and borne on the shipments of muzzles in crates and those which would have accrued at the rates herein found reasonable; and that the Thomson, Diggs Company is entitled to reparation in the sum of $1.52, with interest; and that A. A. Van Voorhies & Company is entitled to reparation in the sum of $3.68, with interest.

An appropriate order will be entered.

44 I. C. C.

No. 8567.

W. P. FULLER & COMPANY

v.

ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY ET AL.

Submitted August 5, 1916. Decided April 28, 1917.

Charges collected on certain carload shipments of linseed oil in tank cars from Minneapolis, Minn., and Superior, Wis., to San Francisco, Sacramento, and Los Angeles, Cal., found to have been based on excessive weights. Reparation awarded.

G. J. Bradley for complainant.

E. W. Camp, *George D. Squires*, and *T. J. Norton* for defendants.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the paint and oil business, with its principal office at San Francisco, Cal. By complaint, filed January 4, 1916, it alleges that the charges collected by defendants for the transportation of carloads of linseed oil in tank cars from Minneapolis, Minn., and Superior, Wis., to San Francisco, Sacramento, and Los Angeles, Cal., between December 31, 1913, and April 29, 1915, inclusive, were unreasonable, unjustly discriminatory, and unduly prejudicial in that they were computed on the basis of excessive weights. Reparation is asked and the establishment of a reasonable basis of weights.

In accordance with tariffs legally applicable, charges were assessed based on weights ascertained by multiplying the gallonage capacities of the cars, as shown in the tariffs, by 7.8, the estimated number of pounds per gallon of linseed oil, also stated in the tariffs. There was some question with regard to a straight overcharge in weight on at least one shipment, but the evidence in this respect is not clear. Neither the rate charged nor the provision in defendants' tariffs that the weights and charges on shipments in tank cars will be based upon the full gallonage capacity of the tank, subject to the carrying capacity of the car trucks, is attacked. Complainant's sole contention is, in substance, that the cars used would not hold the quantity of linseed oil upon the basis of which the freight charges were assessed.

Complainant testified that with one exception all of the shipments were loaded to the capacities of the cars used and that they were

weighed at points of origin by Minnesota and Wisconsin state weighmasters. The actual weights thus obtained were the basis for settlement between the consignors and complainant and were in every instance less than the carrier's weights. The car which it is stated was not loaded to capacity was one for which the carrying capacity of the trucks was less than the carrying capacity of the tank.

Complainant's statement that the cars were loaded to capacity is based merely on an inspection by complainant's employees of the interior of the cars, through the domes, upon their arrival at destinations, and is not the result of actual measurements. There are numerous elements which might affect the accuracy of the method employed.

Complainant referred to a western trunk line tariff naming rates on linseed oil from Chicago and Peoria, Ill., St. Louis, Mo., St. Paul, Minn., and related territories which provides, in substance, that the carload minimum on linseed oil, in tank cars, shall be the capacity of the tank, except that on shipments from Minnesota which are weighed by the state weighmaster the carload minimum shall be the weight certified by him, provided the cars are loaded to capacity.

It is and long has been the general practice of carriers throughout the United States to provide that the carload minima on liquids shipped in tank cars shall be the capacity of the tank and to assess charges upon basis of the weights ascertained by multiplying the capacity of the tank by an estimated weight per unit of volume of the commodity. This practice, defendants assert, insures uniformity in the assessment of freight charges and the maximum use of equipment, not otherwise obtainable.

The tank cars used in the linseed oil traffic are, as a rule, confined to that service and are owned principally by the shippers. When these cars are first placed in service the carriers accept affidavits of the owners as to their gallonage capacities and publish such capacities in their tariffs. As soon as possible thereafter the carriers gauge the cars and the gallonage capacities thus ascertained are substituted in the tariffs for the capacities furnished by the owners. This gauging is effected by ascertaining the cubic capacity of the shell, deducting therefrom the volume of interior braces, etc., and dividing the remainder by the cubical contents of a gallon.

The density of linseed oil is not a fixed quantity; it varies with different makes, with changes in temperature, and with methods of treatment. Defendants stated that the estimated weight of 7.8 pounds per gallon is the actual weight as nearly as any average can be ascertained, and is supported by government tests and by standard books and analyses dealing with that subject. They refer to a publication of the Bureau of Standards entitled "Density and Thermal

Expansion of Linseed Oil and Turpentine," which shows that the weight of linseed oil of various densities at a temperature of 20 degrees centigrade, which corresponds to 68 degrees Fahrenheit, ranges from 7.66 to 7.79 pounds per gallon. The western and southern classifications prescribe 7.8 pounds as the estimated weight of a gallon of linseed oil.

It appears that prior to the time these shipments moved there had been some controversy between the carriers and owners of oil tank cars with respect to weights, in the course of which some of the car owners adopted the practice of making frequent changes in car numbers without advising the carriers. This resulted in the carriers canceling out of their tariffs the equipment of at least one company, which owned the majority of the cars in which the oil here involved moved. Subsequently the cars of this company were restored to the tariffs, the capacities shown in the tariffs being based upon an affidavit of the owner. They have since been gauged by the carriers. These shipments moved after the cars had been restored to the tariffs, but before they were gauged. There is nothing of record to indicate that the numbers of these cars were changed subsequently to the time these shipments started to move, and we think it may be fairly assumed that the car numbers shown in the tariffs at present, and at the time of movement, refer to the same cars.

Some of these shipments moved in cars, the capacities of which, as determined by the carriers' gauge, were available. Charges were assessed on weights based on those capacities, and the claims on nearly all such cars are relatively small. On most of the shipments upon which charges were assessed on weights based on capacities furnished by the car owners the claims are materially larger, the differences between the weights claimed by complainant and those upon which charges were assessed running as high as 3,400 pounds per car. From an examination of the tariffs it appears that, generally speaking, the capacities of these cars, as subsequently ascertained by carriers' gauge, are materially lower than those upon the basis of which charges were collected and slightly in excess of those claimed by complainant.

We find that neither the general method employed by defendants in assessing charges on linseed oil shipments from and to the points involved, nor the estimated weight per gallon of linseed oil is shown to have been or to be unreasonable or otherwise in violation of the act. We are of opinion, however, that the charges collected on weights based on car capacities other than those determined by the carriers' gauge were unreasonable to the extent that they exceeded charges which would have accrued on weights based upon capacities determined by the carriers' gauge. We further find that com-

plainant made the shipments as described and paid and bore the charges thereon; that it has been damaged to the extent of the difference between the charges paid and those that would have accrued on the basis herein found to have been reasonable; and that it is entitled to reparation with interest. The exact amount of reparation due can not be determined on this record, and complainant should prepare a statement showing as to each shipment upon which reparation is claimed the date of delivery, car initial and number, points of origin and destination, route, commodity, rate applied, weight upon basis of which charges were collected, amount of charges collected, weight upon basis of which charges should have been collected under our findings herein, charges that would have accrued and amount of reparation payable on that basis, which statement should be submitted to defendants for verification. This statement may include any outstanding overcharges. Upon receipt of a statement so prepared and verified, we will consider the entry of an order awarding reparation.

No. 8722.

ROY & ROY MILL COMPANY

v.

BOSTON & MAINE RAILROAD.

Submitted November 2, 1916. Decided April 28, 1917.

1. Charges assessed by the delivering carrier for the storage of two carloads of shingles at Lowell, Mass., not shown to have been unreasonable. Shipments found to have been overcharged and reparation awarded.
2. Defendant's scale of storage charges found justified.

E. W. Bundy for complainant.

W. A. Cole and *F. M. Barkwill* for Boston & Maine Railroad.

Report of the Commission.

By the Commission:

Complainant is a corporation engaged in the wholesale lumber and shingle business at Seattle, Wash. By complaint, filed February 23, 1916, it alleges that the storage charges collected by defendant on a shipment of shingles forwarded June 19, 1914, from Ione, Wash., to Lowell, Mass., and there stored in defendant's warehouse, were unreasonable. Reparation is asked.

The shipment of shingles, weighing 39,500 pounds, was loaded into one car at Ione. At Buffalo the shipment was transferred into two cars and so moved to destination, where it arrived August 6, 1914. It was refused by the consignee, and, on September 5, 1914, after 24 days' demurrage had accrued, was unloaded into defendant's warehouse. On August 13, 1915, defendant collected $224.16 storage and $48 demurrage, and, at shipper's directions, forwarded the shipment to Ashland, N. H. Defendant's storage tariff provided for 72 hours' free time, exclusive of Sundays and holidays. September 6, 1914, was a Sunday, and September 7, 1914, a holiday. Storage charges were assessed on the basis of 1 cent per 100 pounds for each period of 10 days from September 10, 1914, to December 1, 1914. By tariff effective on the latter date the following scale of charges became effective and was applied:

For the first 10 days, 1 cent per 100 pounds.
For the second 10 days, 1¼ cents per 100 pounds.
For the third 10 days, 1½ cents per 100 pounds.
For each succeeding 10 days, 2 cents per 100 pounds.

Defendant asserts that $228.90 storage charges should have been collected and that the shipment was undercharged $4.74. There is an admitted overcharge of $24 in demurrage which arose through the error of charging for two cars instead of one.

Following Conference Ruling No. 473, in which we held that "off-track storage by a carrier at destination in its warehouse or otherwise, is controlled by the tariff in effect at the time such storage begins," charges for the entire period during which the shipment was stored, 332 days, should have been assessed on basis of 1 cent per 100 pounds for each period of 10 days, or fraction thereof, which was the charge provided by defendant's tariff in effect at the time the storage began. On this basis the storage charges legally applicable were $134.30, and the shipment was accordingly overcharged $89.86.

Complainant avers that shingles may be stored at Minnesota Transfer, Minn., Keithsburg, Ill., Toledo, Ohio, and Oelwein, Iowa, at a rate of 3 cents per 1,000 shingles for the first month and 1 cent per 1,000 shingles for each succeeding month, and contends that the storage charges collected were unreasonable to the extent that they exceeded charges based on the rates cited. No other testimony was offered with respect to the measure of the rates.

In justification of the increased storage rates defendant relies on our finding in *New Orleans Storage Rules and Regulations*, 28 I. C. C., 605, wherein we approved increased storage rates similar to those established at Lowell December 1, 1914.

Complainant also contends that storage charges should not have been assessed for the reason that it was prevented from making disposition at an earlier date because of the damaged condition of the shingles upon arrival at destination. It admitted, however, that it was promptly notified of the consignee's refusal to accept the shipment, and that the refusal was primarily based upon the fact, verified by later inspections, that the shingles were not of the grade contracted for.

We find that defendant's storage charges, effective December 1, 1914, have been justified. We further find that the storage charges legally applicable on the shipment involved are not shown to have been unreasonable, but that complainant was overcharged to the extent of $89.86 for storage and $24 for demurrage; that it paid and bore the charges; that it has been damaged to the extent of the overcharge and is entitled to reparation in the sum of $113.86, with interest.

An appropriate order will be entered.

No. 8721.

SCOTT PAPER COMPANY

v.

PENNSYLVANIA RAILROAD COMPANY ET AL.

PORTIONS OF FOURTH SECTION APPLICATIONS Nos. 704, 1547, 1562, 1573, AND 1780.

Submitted September 14, 1916. Decided April 28, 1917.

1. Rates on toilet paper in carloads and in less than carloads from Chester and Philadelphia, Pa., to Atlanta, Ga., and various points in North Carolina, South Carolina, Georgia, and Alabama, not shown to have been unreasonable or unjustly discriminatory. Complaint dismissed.
2. Fourth section relief denied.

Clement R. Clements for complainant.

Harry C. Stauffer for Philadelphia & Reading Railway Company.

Frederic L. Ballard for Pennsylvania Railroad Company; Philadelphia, Baltimore & Washington Railroad Company; and New York, Philadelphia & Norfolk Railroad Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the manufacture of toilet paper and paper towels at Chester and Philadelphia, Pa. By complaint, filed March 14, 1916, it alleges that the rates charged by defendants for the transportation of toilet paper in carloads and less than carloads, from Chester and Philadelphia, to Atlanta, Ga., and various points in North Carolina, South Carolina, Georgia, and Alabama, since June 15, 1915, were unreasonable and unjustly discriminatory to the extent that they exceeded the aggregates of the intermediate rates contemporaneously in effect to and from Norfolk, Va. Reparation is asked.

Complainant submitted bills of lading covering a carload and a less-than-carload shipment from Chester to Atlanta, which shipments are said to be typical of all those involved. The carload shipment, consisting of 31,780 pounds of toilet paper and 105 pounds of hardware, moved as routed by the shipper: Philadelphia & Reading Railway to Park Junction, Pa.; Baltimore & Ohio Railroad to Potomac Yard, Va.; Washington Southern Railway and Richmond,

Fredericksburg & Potomac Railroad to Richmond, Va.; Seaboard Air Line to destination. Charges were collected at the joint through class A rate of 41 cents per 100 pounds, minimum 26,000 pounds, governed by the southern classification. The aggregate of the intermediate rates contemporaneously in effect over the route of movement was and now is in excess of the through rate. A through class A rate of 41 cents, which applied from Chester to Atlanta by way of Norfolk, exceeded and now exceeds the aggregate of the intermediate rates to and from Norfolk. This deviation from the rule of the fourth section was protected by appropriate fourth section applications, which were heard with the complaint.

The less-than-carload shipment, consisting of 1,260 pounds of toilet paper and 60 pounds of holders, moved February 2, 1916, as routed by the shipper: Philadelphia & Reading to Hagerstown, Md.; Norfolk & Western and Southern railways to destination. Charges were collected at the joint through fifth-class rate of 62 cents per 100 pounds, governed by the southern classification applicable on shipments in less than carloads. The aggregate of the intermediate rates applicable on this commodity in less than carloads over the route of movement was and is in excess of the through rate. The aggregate of the intermediate rates to and from Norfolk was and is less than the through rate. This deviation from the rule of the fourth section was also protected by appropriate fourth section applications, which were likewise heard with the complaint.

No evidence was offered to show that the rates assailed were unreasonable or unjustly discriminatory other than that the aggregates of the intermediate rates to and from Norfolk were lower than the through rates charged on the shipments which moved through Richmond and not through Norfolk.

Since complainant specifically routed these shipments over routes other than by way of Norfolk, defendants were not at liberty to forward them through that point. No presumption of unreasonableness attaches to a joint through rate applicable over a particular route because a lower combination rate applies over another route. *Paine Lumber Co.* v. *C., C., C. & St. L. Ry. Co.*, 24 I. C. C., 626.

We find that the rates charged are not shown to have been unreasonable or unjustly discriminatory, and the complaint will be dismissed.

Those portions of Fourth Section Applications Nos. 704, 1547, 1562, 1573, and 1780, by which authority is sought to charge a greater compensation for the transportation of toilet paper and paper towels, in carloads and less than carloads, from Chester and Philadelphia to points of destination in North Carolina, South

Carolina, Georgia, and Alabama, as a through route, than the aggregates of the intermediate rates, were heard with the complaint. Defendants offered no testimony in justification thereof, and the applications will be denied to the extent that they are involved.

Appropriate orders will be entered.

INVESTIGATION AND SUSPENSION DOCKET No. 919.

BAGS AND BAGGING MINIMUM WEIGHTS.

Submitted November 24, 1916. Decided April 28, 1917.

Proposed increase from 30,000 to 36,000 pounds in the minimum weight on bags and bagging from St. Louis, Mo., and other defined territories to points in Oklahoma, and from Patterson, Okla., to East St. Louis, Ill., for beyond, found not justified. Suspended schedules ordered canceled.

Robert N. Nash for St. Louis & San Francisco Railroad Company.

F. R. Dalzell for Gulf, Colorado & Santa Fe Railway Company; Atchison, Topeka & Santa Fe Railway Company, and others.

W. V. Hardie for Oklahoma Traffic Association.

H. L. Bennett for Corporation Commission of Oklahoma.

C. L. Widney for Chickasha Cotton Oil Company.

J. H. Johnston for Oklahoma Cotton Seed Crushers' Association.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

By schedules, filed to take effect September 15, 1916, and later dates, respondents proposed to increase the minimum on bags and bagging, made of cotton, clayed cotton, burlap, gunny or jute, applicable from St. Louis, Mo., and other defined territories to points in Oklahoma and from Patterson, Okla., to East St. Louis, Ill., for beyond, from 30,000 pounds to 36,000 pounds. Upon protest by the Oklahoma Traffic Association and the Oklahoma Cotton Seed Crushers' Association, of Oklahoma City, Okla., and by the Chase Bag Company of St. Louis, the schedules were suspended until July 13, 1917. The Chamber of Commerce of Houston, Tex., intervened, but entered no appearance. Rates are stated in cents per 100 pounds.

The minimum weight provided in the western classification for bags and bagging made of cotton, clayed cotton, burlap, gunny or

jute is 30,000 pounds. Commodity rates, with a minimum of 30,000 pounds, have been in effect for several years on these commodities from and to the points involved, and also from defined territories, Missouri River points, and New Orleans, La., to points in Texas, Kansas, and Arkansas, and from Arkansas points to Memphis, Tenn., St. Louis, and East St. Louis. No increases are proposed to Texas common points or to points in Kansas. Effective September 8, 1916, and later dates, the minimum on burlap bags and bags made of various materials was increased from 30,000 to 36,000 pounds, applicable in connection with commodity rates from defined territories, Kansas City, Mo., and New Orleans, to various points in Arkansas, and from Chicago, Ill., to Memphis.

Respondents explain that the proposed increased minimum is primarily intended to remove discrimination against Houston bag shippers, who have a minimum of 36,000 pounds to Oklahoma City, which it is urged we approved in *Corporation Commission of Oklahoma* v. *A., O. & W. R. R. Co.*, 27 I. C. C., 210. A distance schedule of rates on cotton and burlap bags, in carloads, from Galveston, Tex., to Oklahoma points was prescribed in that case. For example, a rate of 50 cents was prescribed for 515 miles, the distance to Oklahoma City. The minimum under the commodity rate of 60 cents in effect on cotton and burlap bags from Galveston to Oklahoma City prior to the establishment of the distance scale of rates was, and still is, 36,000 pounds. The minimum was not under attack in the case cited, but we did comment on the per car earnings at the minimum of 36,000 pounds, applicable under the 60-cent rate, and condemned that rate. The reasonableness of the rate from Houston to Oklahoma points was not there in issue. In order to observe the long-and-short-haul provision of the fourth section from Galveston to Oklahoma City respondents established a rate of 50 cents, minimum 36,000 pounds, from Houston to Oklahoma City, for application over two or more lines.

The proposed increased minimum would create several departures from the long-and-short-haul rule of the fourth section. The rate on bagging and bags of various kinds from St. Louis to Texas common points is 60 cents, minimum 30,000 pounds, while respondents propose to increase the minimum from 30,000 to 36,000 pounds under the present rate of 60 cents from St. Louis to many points in Oklahoma that are intermediate from St. Louis to Texas common points. Similar departures from the fourth section would be created from other defined territories. A minimum of 30,000 pounds also applies on various kinds of bags from New Orleans to Arkansas City and Wichita, Kans., from and to which Tulsa, Shawnee, Oklahoma City, and other points in Oklahoma are intermediate over certain routes.

The rates to the Kansas points named are lower than the rates to the intermediate Oklahoma points, but the maintenance of the lower rates to the farther distant points is covered by appropriate fourth section applications not set for hearing with this proceeding. To increase the minimum from New Orleans to Oklahoma points to 36,000 pounds would constitute an unauthorized departure from the provisions of the fourth section and therefore would be unlawful. It is observed that there is no specific protest against the proposed increased minimum on cement bags, but it appears that they are embraced within many of the items in controversy and many fourth section departures would result if these increases were allowed to take effect. Respondents explain that they overlooked the fact that a lower minimum applies to farther distant points, and offered no justification in respect thereof.

Protestants insist that the discrimination, if any exists, should be removed by establishing a 30,000-pound minimum from Houston to Oklahoma points rather than by increasing the minimum from the many territories involved. They further contend that the proposed 36,000-pound minimum to Oklahoma points would constitute a discrimination in itself in view of the present 30,000-pound minimum to many farther distant points.

No satisfactory evidence was introduced to show whether the proposed minimum reasonably comports with the average loading of bags, nor was it otherwise shown that the proposed minimum would be reasonable.

We find that respondents have not justified the proposed increased minimum, and an order will be entered requiring the cancellation of the schedules under suspension.

No. 8737.

S. C. WOOLMAN & COMPANY

v.

PENNSYLVANIA RAILROAD COMPANY ET AL.

Submitted September 1, 1916. Decided April 28, 1917.

Charges on two carloads of baled hay from Mount Vernon, Ohio, to North Philadelphia, Pa., not found to have been based on an erroneous weight. Complaint dismissed.

Harold S. Shertz for complainants.
Frederic L. Ballard for defendants.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainants are Lucy K. Woolman, Walker K. Woolman, and Clarence S. Woolman, copartners, formerly engaged in the grain, hay, and feed business at Philadelphia, Pa., under the name of S. C. Woolman & Company. By complaint, filed March 20, 1916, they allege that the charges collected by defendants on two carloads of baled hay, shipped August 25, 1916, from Mount Vernon, Ohio, to Altoona, Pa., and reconsigned to North Philadelphia, Pa., were unlawful and unreasonable in that they were computed on the basis of erroneous weights. Reparation is asked.

The shipments moved over the lines of the Pennsylvania Company and the Pennsylvania Railroad. Charges were collected at a rate of 21.9 cents per 100 pounds on 43,700 pounds, the weight registered by the track scales of the Pennsylvania Railroad at North Philadelphia.

Complainants state that the shipments were unloaded at destination by the Keystone Elevator & Warehouse Company, in whose warehouse the hay was stored for some time; that it was subsequently drayed from the warehouse and weighed on wagon scales; that one shipment weighed 21,180 pounds, the other 19,555 pounds; and that settlement on basis of those weights was made by complainants with the shipper and purchasers of the hay. No one with actual knowledge of the weight of the shipments, or who was present when the cars were unloaded, or who could testify as to the pertinent facts concerning the shipments, appeared at the hearing.

Defendants show that the cars containing the shipments were weighed loaded and empty, that the scales used had been inspected and minor variations adjusted two weeks previously to the weighing, and that the scales were again inspected two months later and found to be correct.

We find the evidence introduced by complainants insufficient to justify a disregard of the scale weights, and an order will be entered dismissing the complaint.

No. 8763.

E. I. DU PONT DE NEMOURS POWDER COMPANY

v.

PHILADELPHIA & READING RAILWAY COMPANY ET AL.

Submitted July 3, 1916. Decided April 28, 1917.

Following *Du Pont de Nemours Powder Co.* v. *L. & N. R. R. Co.*, 33 I. C. C., 288, reparation awarded on a carload of high explosives from Thompsons Point, N. J., to Yellow Rock, Ky.

Harvey S. Farrow for complainant.

No appearance for defendants.

Report of the Commission.

By the Commission:

Complainant is a corporation engaged in the manufacture of high explosives in New Jersey and other states, with its principal office at Wilmington, Del. By complaint, filed March 28, 1916, as amended, it alleges that the charges collected by defendants for the transportation of a carload of high explosives shipped December 4, 1914, from Thompsons Point, N. J., to Yellow Rock, Ky., were unreasonable. Reparation is asked.

The shipment consisted of 408 cases of high explosives and weighed 24,216 pounds. It moved by way of Philadelphia & Reading Railway to Lurgan, Pa.; Western Maryland Railway to Hagerstown, Md.; Norfolk & Western Railway to Basic, Va.; Chesapeake & Ohio Railway to Winchester, Ky.; Louisville & Nashville Railroad to destination. No joint rate was applicable and charges were collected in the sum of $370.50 on basis of a combination rate of $1.53 per 100

pounds, composed of the first-class rate of 69 cents, minimum 20,000 pounds, governed by the official classification, to Winchester, and the double first-class any-quantity rate of 84 cents from Winchester to destination, governed by exceptions to the southern classification.

Complainant contends that the through charge was unreasonable to the extent that the rate charged for the movement beyond Winchester exceeded the first-class rate, and bases its case solely upon our decision in *Du Pont de Nemours Powder Co.* v. *L. & N. R. R. Co.*, 33 I. C. C., 288. In that case we held that the double first-class rating, provided in defendant's exceptions to the southern classification, for the transportation of high explosives in carloads from New Jersey and Pennsylvania points to Yellow Rock and other Kentucky points, was unreasonable to the extent that it exceeded first class, and awarded reparation on shipments which moved from Thompsons Point and Emporium, Pa., through Winchester to Yellow Rock.

At the time the shipment in issue moved the first-class rate from Winchester to Yellow Rock was 42 cents per 100 pounds. On March 1, 1915, following the opening of a new line which shortened the distance from Winchester to Yellow Rock, the first-class rate was reduced to 37 cents per 100 pounds. Defendants were not represented at the hearing, but have expressed willingness on our informal docket to make reparation on the basis of the 42-cent rate.

Following our decision in *Du Pont de Nemours Powder Co.* v. *L. & N. R. R. Co.*, *supra*, and on the facts of record in this case, we find that the rate assailed was unreasonable to the extent that the rate charged for the transportation from Winchester to Yellow Rock exceeded 42 cents per 100 pounds; that complainant made the shipment as described and paid and bore the charges thereon at the rate herein found to have been unreasonable; that it was damaged to the extent of the difference between the charges paid and the charges that would have accrued at the rate herein found to have been reasonable; and that it is entitled to reparation in the sum of $101.70, with interest.

An order awarding reparation will be entered.

No. 8927.

DREWES SUGAR COMPANY ET AL.

v.

SOUTHERN PACIFIC COMPANY ET AL.

PORTIONS OF FOURTH SECTION APPLICATIONS Nos. 628 AND 677.

Submitted December 20, 1916. Decided May 1, 1917.

1. Rate of 25 cents per 100 pounds, minimum 40,000 pounds, on raw sugar in carloads from New Orleans and other Louisiana points to Sugarland, Tex., not found unreasonable or unduly prejudicial. Complaint dismissed.
2. Fourth section relief denied lines participating in present through rates on raw sugar from New Orleans, La., to Galveston, Tex., but granted indirect lines participating in rate to Sugarland, Tex.

Foster, *Milling*, *Saal & Milling* for complainants.

S. C. Griffin for Imperial Sugar Company, intervener.

Fred H. Wood; Denegre, *Leovy & Chaffe;* and *Baker*, *Potts*, *Parker & Garwood* for Southern Pacific Company and allied lines.

R. C. Fulbright for New Orleans, Texas & Mexico Railway Company.

Esmond Phelps and *Frank Koch* for Texas & Pacific Railway Company; International & Great Northern Railway Company and its receiver; and Gulf, Colorado & Santa Fe Railway Company.

N. M. Leach for Texas & Pacific Railway Company.

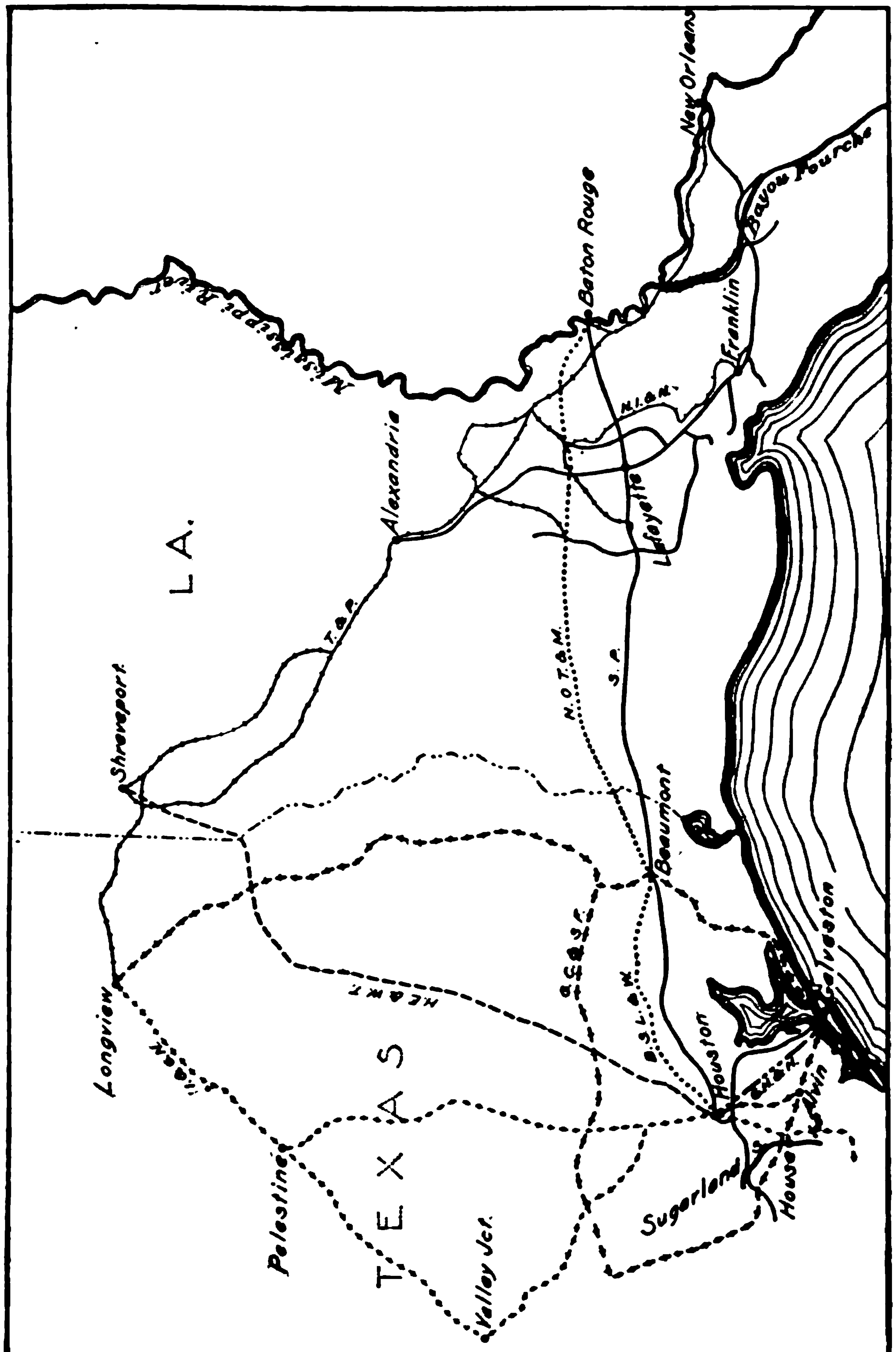
Report of the Commission.

Meyer, *Commissioner:*

This complaint is brought by a corporation engaged in sugar brokerage at New Orleans, La., and by 13 producers of sugar at various other points in that state. In their complaint, filed June 3, 1916, they attack the carload rate of 25 cents per 100 pounds on raw sugar from New Orleans and other Louisiana points to Sugarland, Tex., alleging that it is unreasonable *per se* and unduly prejudicial as against rates on the same commodity from interior Louisiana points to New Orleans.

The sugar-producing district of Louisiana is in the southern part of the state, extending about 150 miles west and 175 miles northwest of New Orleans. A majority of the shipping points are within 100 miles of New Orleans. Nearly all of the raw sugar produced

in Louisiana is shipped to refineries located at New Orleans and at Gramercy, La., about 40 miles from New Orleans.



The complainants desire to ship to the refinery of the Imperial Sugar Company, at Sugarland, Tex. That company intervened in

support of the complaint and has taken an active part in the proceedings.

Sugarland is on the Galveston, Harrisburg & San Antonio Railway and the Sugar Land Railway, 27 miles west of Houston, Tex., and 389 miles from New Orleans. The short-line route from New Orleans and from much of the Louisiana sugar district is via the Southern Pacific. Another route is over the New Orleans, Texas & Mexico to Sabine River, La., Beaumont, Sour Lake & Western to Houston, Tex., International & Great Northern to House, Tex., and Sugar Land Railway to destination. A third route is by way of the Texas & Pacific to Longview, Tex., International & Great Northern to House, and Sugar Land to destination. The locations of the principal points and routes involved are shown by the accompanying map.

For a considerable time prior to April 1, 1916, joint through carload rates on sugar, either refined or raw, were maintained from New Orleans and certain interior Louisiana points to Sugarland equal to the combination of the commodity rate of 17 cents from New Orleans to Houston and the fifth-class rate of 11 cents beyond. Effective on that date defendants published a rate of 25 cents on raw sugar from all points in Louisiana. This rate is said by defendants to be merely the application in reverse direction of the rate on refined sugar to New Orleans, established upon the opening of the Sugarland refinery in 1902. It appears, however, that little sugar has moved from Louisiana to Sugarland, and that the Imperial Sugar Company up to the time of the hearing has drawn its supply from Cuba and Porto Rico as it did previous to the establishment of the 25-cent rate.

In attacking the rate of 25 cents complainants and the intervener cite the rates on raw sugar from Louisiana points to New Orleans and submit the following comparisons of rates, distances, and ton-mile earnings, certain minor errors having been corrected:

From—	Distance.	Rate.	Ton-mile earnings.
	Miles.	*Cents.*	*Mills.*
Addis, La., to—			
New Orleans	90	7.5	16.6
Sugarland	294	25	17
Port Allen, La., to—			
New Orleans	98	7.5	15.3
Sugarland	302	25	16.5
Torras, La., to—			
New Orleans	152	8.5	11.2
Sugarland	356	25	14
Lafayette, La., to—			
New Orleans	145	13.2	18
Sugarland	243	25	20.6
Cade, La., to—			
New Orleans	128	10.3	15.5
Sugarland	146	25	20.3

Defendants objected to these comparisons as not fairly representative of the producing territory. Franklin, La., is said by defendants to be a central point in sugar-producing territory on the Southern Pacific, from which point the distance to New Orleans is 101 miles and to Sugarland 286 miles; the rates 10.3 cents and 25 cents; and the ton-mile earnings 20.4 mills and 17.5 mills, respectively. A further fact to be considered in making these comparisons is that traffic originating on defendants' lines must cross the Mississippi River to reach New Orleans. From the 11 points of location of complainants' factories to New Orleans the average distance is 105 miles and the average short-line distance to Sugarland about 350 miles. The average rate to New Orleans is 10 cents as against the rate of 25 cents to Sugarland, and the ton-mile earnings 19 mills and 14.3 mills, respectively.

Defendants claim that their rates from Louisiana points to New Orleans are below normal, and that they were originally established to meet water competition on the numerous rivers and bayous intersecting the sugar district. While this competition is not so active as formerly, it is still actual as well as potential. Defendants submitted in evidence the map of Louisiana issued for the Louisiana Railroad Commission, which shows 4,794 miles of navigable waterways in that state, much of which is in the sugar district. It was testified that practically all of the sugar produced on lines of the Southern Pacific in Louisiana is subject to water competition. A considerable number of plantations on the Texas & Pacific ship their raw sugar by water, and more are in position to do so. Sufficient detailed testimony regarding water competition was presented to establish substantially the facts alleged. Without expressing an opinion as to the reasonableness of the rates to New Orleans, we are unable, upon the evidence before us, to find that such disparity as exists between the rates on raw sugar to New Orleans and to Sugarland, respectively, is unlawful.

Complainants and intervener cite also the rates on refined sugar from New Orleans and other Louisiana points to Galveston, Houston, and Alvin, Tex. No refinery is located at any of these points, and this citation of rates bears only upon the charge of unreasonableness in the rate on raw sugar to Sugarland. The carload minimum on refined sugar, Louisiana to Texas, is 30,000 pounds; on raw sugar to Sugarland, 40,000 pounds. Following is a comparison of distances, rates, and earnings from New Orleans and Franklin, La., to the points named:

From—	Distance.	Rate.	Ton-mile earnings.	Car-mile earnings, minimum carload.
New Orleans to—	*Miles.*	*Cents.*	*Mills.*	*Cents.*
Houston	362	17	9.4	14.1
Alvin	386	18	9.3	14
Galveston	[1] 420	12	5.7	8.6
Do	[2] 354	12	6.8	10.2
Sugarland	389	[3] 25	12.9	25.8
Franklin to—				
Houston	261	18	13.8	20.7
Alvin	285	18	12.6	19.1
Galveston	[1] 318	18	11.3	17
Do	[2] 253	18	14.2	21.3
Sugarland	286	[3] 25	17.5	35

[1] Via Southern Pacific.
[2] Via Southern Pacific to Beaumont, Santa Fe-Texas lines.
[3] Applies on raw sugar only.

Defendants testified that the rate of 12 cents New Orleans to Galveston was established by the rail carriers to meet the ocean rate of 15 cents, New York to Galveston, which includes absorption of 3 cents per 100 pounds for lighterage in New York harbor. That rate is carried not only by the Southern Pacific Steamship lines, owned by the Southern Pacific Company, but by other ocean lines operating between New York and Galveston, among which were mentioned the Mallory Steamship Company, the Southern Steamship Company, and the Texas City Steamship Company. During the year ended June 30, 1916, 334 tons of refined sugar were transported from New York to Galveston by the Southern Pacific Steamship lines and 234½ tons by the Mallory line. Apparently none was handled by the other lines. Defendants also filed an exhibit showing 29 sailings from New Orleans to Galveston and Brownsville, Tex., during the period from July 23, 1904, to June 23, 1906, and 4 sailings between May 31 and October 1, 1915. A tariff of the Boca Grande Steamship Company, effective July 1, 1915, showing a rate of 12 cents per 100 pounds on sugar in barrels, New Orleans to Galveston and Houston, was also filed. Steamer service between New Orleans and Galveston had been discontinued for the reason, as understood by defendants, that owing to the European war the vessels found more profitable business elsewhere. However, no water service between these points had been maintained for several years prior to the opening of the war.

In view of the small movement of sugar from New York by water, the higher water rate, including an absorption of lighterage charges, and the absence of active water competition between New Orleans and Galveston, the present necessity of maintaining a rail rate as low as 12 cents between these points is not clear. It is evident, however, that we can not accept this rate as the measure of a reasonable rate on raw sugar from New Orleans to Sugarland,

as we are requested to do. Apparently there is no movement of raw sugar from New York by water.

The rate of 17 cents New Orleans to Houston is fixed by using as factors the 12-cent rate to Galveston and a rate of 5 cents Galveston to Houston. The latter is said to be also water compelled, as Houston is situated on Buffalo Bayou which affords navigable water communication with the Gulf. Alvin is on the Gulf, Colorado & Santa Fe line between Galveston and Houston and in common with other stations on that line, defendant says, is subject to the cross-country competition of Buffalo Bayou. Competition at Alvin is less acute than at Houston and the rate is made 1 cent higher. Alvin is considered by the carriers to be in the Houston-Galveston group as distinguished from Texas common-point territory. Sugarland, on the other hand, although less distant from New Orleans via the short lines, is not intermediate to Galveston. Defendants claim that by reason of its proximity to Houston and Galveston, Sugarland enjoys much lower rates than it otherwise would. Were it not for the influence of water competition, Houston and all neighboring points, it is claimed, would take the Texas common-point rate of 44 cents on sugar from Louisiana. The distance from New Orleans to Sugarland is approximately the same as from New Orleans to Waskom and other Texas points to which the rate of 44 cents applies. Under western classification sugar in carloads takes fifth-class rates. The fifth-class rate New Orleans to Houston is 44 cents, and in *New Orleans-Texas Rates*, 38 I. C. C., 1, we approved a fifth-class rate of 45 cents New Orleans to Houston and Galveston. Following is a comparison of commodity rates on sugar with fifth-class rates from New Orleans to various points:

New Orleans to—	Fifth-class rate.	Commodity rate on sugar.	Percentage commodity rate to class rate.
	Cents.	*Cents.*	
Sugarland, Tex	44	[1] 25	56.8
Dallas, Tex	69	44	63.7
Houston, Tex	45	17	37.7
Galveston, Tex	45	12	26.6
Fort Smith, Ark	44	28	63.6
Oklahoma City, Okla	70	40	57.1
Little Rock, Ark	37	22	59.4
Memphis, Tenn	30	12	40
Kansas City, Mo	38	32	84
St. Louis, Mo	40	17	42.5
Nashville, Tenn	40	17	42.5
Chicago, Ill	47	23	48.9
Birmingham, Ala	49	21	42.8
Mobile, Ala	21	12	57.1
Pensacola, Fla	23	15	65.2

[1] Applies only on raw sugar.

Complainants contend further that raw sugar is entitled to lower rates than refined sugar, since it is less valuable, less liable to damage, and loads more heavily. It is ordinarily transported in cotton-lined burlap sacks, loads to car capacity, and is not damaged by wetting. The difference in value between raw sugar and refined sugar is about 1 cent per pound regardless of the level in prices. A shipper testified that he usually loads 60,000 to 80,000 pounds, and frequently as much as 100,000 pounds, of raw sugar per car. The usual car loading of refined sugar is 100 barrels, or about 37,000 pounds, including weight of containers. The rates on refined sugar, moreover, are also applicable to mixed carloads of sugar and molasses. As already shown, however, the rates on raw sugar to Sugarland are 3 cents and 4 cents less than on refined sugar from New Orleans and from interior Louisiana, respectively.

Complainants further argue that in fixing rates on raw sugar consideration should be given to the fact that the carriers secure the additional haul of the refined sugar from the refinery, the benefit of which in this case necessarily accrues to defendants. This fact was not considered in fixing the rate to Sugarland; but although the relation of rates to and from transit points is frequently a matter of importance to carriers in its bearing upon the control of traffic, it is not a matter which we can take into account in judging the reasonableness of the rate now before us. Neither the outbound rate nor the relationship of inbound to outbound rates is in issue.

Defendants show that rates are commonly constructed by combination on Houston from points in Louisiana to points in the territory surrounding Houston whenever such combination is less than the Texas common-point rate. As examples they cite the rate of 38 cents on sugar, New Orleans to Brenham, Tex., 438 miles; 37 cents to Wharton, Tex., 428 miles, and 41 cents to Bay City, Tex., 449 miles. It appears evident that Sugarland, notwithstanding its greater proximity to the Houston-Galveston group, is related to the rate territory of which these points are representative.

Defendants also show that the rate on raw sugar, New Orleans to Sugarland, compares favorably with the rates on other commodities between the same points, and among others give the following examples:

From New Orleans to Sugarland—commodity.	Rate.	From New Orleans to Sugarland—commodity.	Rate.
	Cents.		*Cents.*
Canned goods	[1]44	Bagging	26
Soap	[1]44	Burlap bags	26
Condensed milk	[1]44	Salt	22
Green coffee	26¼	Potatoes	[1]35
Molasses	33	Fertilizer	20

[1]Class rate; commodity rate is higher.

The influences which have contributed to make relatively lower rates, referred to by complainants, from New Orleans to Memphis, Nashville, St. Louis, Kansas City, Chicago, and neighboring points than to Texas have been so fully discussed in other proceedings that further reference in this report is unnecessary. We do not find that the rate of 25 cents per 100 pounds on raw sugar in carloads, minimum 40,000 pounds, Louisiana points to Sugarland, is materially out of line with other rates to Sugarland or rates to other Texas points, or that it has been shown unreasonable or unduly prejudicial. An order will therefore be entered dismissing the complaint.

Such portions of Fourth Section Applications Nos. 628 and 677 as seek authority to continue to charge for the transportation of raw sugar from New Orleans to Galveston rates which are lower than the rates contemporaneously maintained on like traffic to Houston and other intermediate points, were set for hearing with this complaint. The rates on sugar from New Orleans to Galveston make no distinction between raw sugar and refined sugar, and this appears to be the general rule. The record indicates that there is no sugar refinery in Texas other than that at Sugarland, and there is no evidence of any movement of raw sugar to any other Texas point. Inasmuch as their sugar rates, as now published, would be applicable to any movement of refined sugar to Galveston or intermediate points, defendants undertook to justify their fourth section deviations between New Orleans and Galveston on sugar generally.

The most direct rail route from New Orleans to Galveston is over the Southern Pacific to Beaumont and Santa Fe-Texas lines beyond, a distance of 354 miles. The usual routing is over the Southern Pacific via Houston, 420 miles, which distance will be used in our comparisons. As already stated, the rate on sugar, including raw sugar, New Orleans to Galveston, is 12 cents, to Houston 17 cents, and to other intermediate points, as far east as Beaumont, 18 cents. The carriers' explanation of this adjustment has already been given. The rates from New York to Houston, fixed by the ocean carriers, are usually higher than to Galveston. The rail rates from New Orleans, on classes and generally on commodities, are the same to Houston as to Galveston. In *New Orleans-Texas Rates*, *supra*, we approved equal class rates from New Orleans to Houston and Galveston and to intermediate points west and north of Beaumont. We are not convinced of the necessity of excepting refined sugar from this adjustment and there is clearly no substantial reason for excepting raw sugar.

Following are the indirect rail routes from New Orleans to Houston and Galveston, with distances and earnings on sugar compared with short-line distances and earnings. The car-mile earnings

are computed at the minimum weight of 30,000 pounds. In *American Beet Sugar Co.* v. *S. P. Co.*, 41 I. C. C., 631, it was testified that the usual loading of refined sugar, Louisiana to Texas, was about 30,000 pounds per car. The minimum has since been raised from 24,000 pounds to 30,000 pounds, from which it may be assumed that the present loading is somewhat heavier.

Route.	Sugar, raw or refined, New Orleans to—							
	Houston.				Galveston.			
	Miles.	Rate.	Ton-mile earnings.	Car-mile earnings.	Miles.	Rate.	Ton-mile earnings.	Car-mile earnings.
		Cents.	*Mills.*	*Cents.*		*Cents.*	*Mills.*	*Cents.*
So. Pac	362	17	9.4	14.1	420	12	5.7	8.6
T. & P., Longview, I. & G. N.	604	17	5.6	8.4	662	12	3.7	5.6
T. & P., Dallas, M., K. & T. of T.	835	17	4.1	6.1	885	12	2.7	4.1
T. & P., Dallas, G., C. & S. F.	862	17	3.9	5.8	866	12	2.8	4.2
T. & P., Shreveport, H. E. & W. T.	548	17	6.2	10.3	606	12	4	5.8
T. & P., Ft. Worth, T. & B. V.	789	17	4.3	6.5	837	12	2.9	4.3
L. R. & N., Shreveport, M., K. & T. of T.	866	17	3.9	5.9	916	12	2.6	3.9

The assistant freight traffic manager of the Texas & Pacific, who testified for all of the indirect lines, stated that his company had discontinued the solicitation of business to Galveston at the 12-cent rate and was considering the withdrawal of both that rate and the 17-cent rate to Houston. Nevertheless, he requested authority on behalf of all indirect lines to continue both rates at the carriers' option. He urged that it was in the public interest to have available additional routes in view of the possibility that the short-line routes might be closed by floods which sometimes prevail in Louisiana; also that shipments routed via the indirect lines are often reconsigned to other destinations. These lines pass through Texas common-point territory, to which the rate of 44 cents applies except where combinations on Houston are lower. The rates here in question to Houston and Galveston can hardly be regarded as remunerative via the indirect lines, in view of the rates maintained via these lines to Texas common-point territory and in view of the fact that the transportation is over two lines and through territory of relatively low traffic density. The burden of showing that an adjustment in violation of the fourth section results in reasonable and nondiscriminatory rates is upon the carriers, and that burden they have not here sustained. The authority sought will, therefore, be denied.

Fourth section violations in the rates on refined sugar were not specifically set for hearing, and our order will apply to rates on raw sugar only. Our conclusion, however, based upon the evidence sub-

mitted, is that similar disposition should be made of the rates in their application to refined sugar. The carriers will be expected to adjust their rates accordingly. Should they fail to do so, further investigation will be had, if deemed necessary, and an appropriate order issued.

This traffic from Louisiana to Sugarland passes through Houston and up to that point over the same routes as when destined to Galveston. Sugarland is 27 miles from Houston via the Southern Pacific and 36 miles via the International & Great Northern and Sugar Land Railway. Following is a comparison of distances and earnings on raw sugar, minimum 40,000 pounds, over direct and indirect routes:

Raw sugar, New Orleans to Sugarland.

Route.	Miles.	Rate.	Ton-mile earnings.	Car-mile earnings.
		Cents.	*Mills.*	*Cents.*
Southern Pacific	389	25	12.9	25.8
Gulf Coast lines, Houston, I. & G. N., House, Sugarland	403	25	12.4	24.8
T. & P., Longview, I. & G. N., House, Sugarland	640	25	7.8	15.6
L. R. & N., Shreveport, So. Pac	564	25	8.8	17.6

Authority will be given the carriers participating in the rate via indirect routes to maintain higher rates on raw sugar from Louisiana to intermediate points than to Sugarland, subject to complaint and investigation.

SUPPLEMENTAL FOURTH SECTION ORDERS NOS. 4960 AND 5322.

PROPORTIONAL RATES ON CLASSES AND COMMODITIES FROM CINCINNATI, OHIO, LOUISVILLE, KY., JEFFERSONVILLE AND NEW ALBANY, IND., TO DESIGNATED GULF PORTS FOR EXPORT.

Submitted November 1, 1916. Decided May 1, 1917.

Petition to rescind supplemental Fourth Section Orders Nos. 4960 and 5322 denied.

Edward Barton, *F. G. Lantz*, *O. S. Lewis*, and *S. C. Matthews* for petitioners.

R. Walton Moore for southern carriers.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

The carriers operating from points in central freight association territory to the Ohio River crossings, hereinafter referred to as the northern lines, have presented a petition asking the Commission to rescind its supplemental Fourth Section Order No. 4960, issued June 5, 1915, in response to Fourth Section Application No. 10082, of E. B. Boyd, agent, and supplemental Fourth Section Order No. 5322, issued January 4, 1916, in response to Fourth Section Application No. 10470, of E. B. Boyd, agent, for and on behalf of carriers parties to said applications. The applications were made primarily on behalf of the carriers operating from Ohio River crossings to New Orleans, La., and other Gulf ports, hereinafter referred to as the southern lines, but the relief granted by said orders went to the carriers composing the through lines or routes from points in central freight association territory to the Gulf ports.

By these orders the carriers were granted temporary relief from the operation of the long-and-short-haul rule to establish class and commodity rates from Cincinnati, Ohio, Louisville, Ky., and New Albany and Jeffersonville, Ind., on traffic originating at points north thereof when destined to Gulf ports, for export, pending the action of the Commission upon the applications for relief filed by the carriers or their agents on or before February 17, 1911, respecting export rates on classes and commodities from Ohio River crossings to ship side, Gulf ports. This relief was deemed necessary in order to enable the southern carriers to participate in export traffic originating in central freight association territory.

The reasons assigned for the relief prayed were that considerable export business was being offered in the territory north of the Ohio River, but that on account of the through export rates to the Gulf ports from this territory being higher than export rates on like traffic to the Atlantic ports practically all of the business was being moved through the Atlantic seaboard, and especially through the port of New York. It was stated that the lines serving the Gulf ports had been unsuccessful in inducing the roads north of the river to publish through export rates to Gulf ports properly aligned with the rates to New York, and therefore the lines south of the river considered some reduction necessary in the rates south of the river in order to meet the competitive conditions of the lines operating from points in central freight association territory to the Atlantic seaboard. This was to be accomplished by a scheme of applying from the Ohio River crossings named above graduated proportional rates which when added to the local rates from points in central freight association territory would have the effect of equalizing the total rates to the Gulf ports with the export rates to New York.

The general plan of constructing rates between points in central freight association territory, on the one hand, and southern territory, on the other, is by combination on the Ohio River. The rates in central freight association territory are made generally on a distance basis; and therefore, Cleveland, for instance, being nearer to north Atlantic ports than is Dayton or Toledo, properly enjoys lower rates to those ports than either Dayton or Toledo. By the plan of equalization it was not intended to disturb the long-existing relationship in rates between points in this territory, but by the graduated scale of proportional rates to be made applicable from the said Ohio River crossings on traffic from beyond the rate from Cleveland, Dayton, Toledo, or any other point in central freight association territory would be the same to the Gulf ports as to the north Atlantic ports, subject to a specified minimum. As an illustration, Dayton takes a higher rate than Cleveland on traffic moving through Cleveland to New York, and under the plan of equalization Dayton would likewise take a higher rate than Cleveland on traffic moving from Cleveland through Dayton to the Gulf ports. In this way a departure from the long-and-short-haul rule is created and to this extent fourth section relief was granted by the above-numbered orders.

The petition to rescind is based on the ground that the Commission is without jurisdiction to grant exemption from the provisions of the amended fourth section of the act without the affirmative application or concurrence of all of the carriers parties to the through route involved. The contention of the northern lines is that they did

not desire nor request leave to depart from the long-and-short-haul provision of the amended fourth section with respect to points of origin asked by agent Boyd, as such departures would involve an innovation with respect to rates from those points in every direction which would be utterly inconsistent with their scheme of rate making which has been in effect since long prior to the establishment of the act. They further contend that this Commission is without jurisdiction to grant relief from the fourth section when the originating carriers involved have not specifically asked for such relief, and are not, therefore, proper parties to agent Boyd's application; that the law contemplates that an application under the fourth section must be made by the carrier on whose line the fourth section departures occur; and that by the relief granted the northern lines are made subject to suits for damages from shippers at the higher rated intermediate points. The position of the southern carriers is that our jurisdiction is beyond question. Briefs were filed and argument had.

The fundamental question involved in this proceeding is whether or not this Commission has the power under the fourth section of the act as amended June 18, 1910, to grant exemption from the operation of the long-and-short-haul rule without the affirmative application or concurrence of all the carriers parties to the through routes involved.

The amended fourth section of the act provides, among other things, that—

> * * * it shall be unlawful for any common carrier subject to the provisions of this act to charge or receive any greater compensation in the aggregate for the transportation of passengers, or of like kind of property, for a shorter than for a longer distance over the same line or route in the same direction, the shorter being included within the longer distance * * * *Provided, however,* that upon application to the Interstate Commerce Commission such common carrier may in special cases, after investigation, be authorized to charge less for longer than for shorter distances for the transportation of passengers or property; and the Commission may from time to time prescribe the extent to which such designated common carrier may be relieved from the operation of this section.

As will be observed from the language of the statute, the prohibition of the law is against any common carrier charging more for the shorter than for the longer haul over the same line or *route* of one carrier or over the line or *route* of all the carriers composing the *whole of a through route,* except in special cases. Therefore, in passing upon the said applications the Commission did not consider that it was dealing separately with either the line or *route* of the carriers north of the river, or the line or *route* of the carriers south of the river, but with the whole of the *through line or*

route involved from points of origin to the point of destination *composed of the two or more* separate carriers.

Section 15 of the act empowers this Commission either on complaint or on its own initiative, without complaint, to establish through routes and joint rates and classifications. In view of these broad powers it is hardly conceivable that the Congress could have intended that the fourth section of the act should be so construed and administered as to preclude relief that otherwise would result from a situation such as that here in question unless all of the carriers parties to the through route involved were voluntary parties to the application requesting relief. Such a construction would make unworkable and defeat the purposes of the amendment and is at variance with the broad discretion vested in the Commission and the prevailing practice of administrative tribunals. In construing the powers of the Commission under the amended fourth section the Supreme Court in *United States* v. *Merchants, etc., Asso.*, 242 U. S., 178, said:

> The clause in amended fourth section which declares "that upon application to the Interstate Commerce Commission such common carrier may in special cases, after investigation, be authorized by the Commission to charge less for longer than for shorter distances" was designed to guard against the issue, by the Commission, of general orders suspending the long-and-short-haul clause and to ensure action by it separately in respect to particular carriers and only after consideration of the special circumstances existing. Whenever such consideration has been given—"the Commission may from time to time prescribe the extent to which such designated common carrier may be relieved from the operation of this section."
>
> It may be doubted whether application by the carrier is a prerequisite to the granting of relief. As was said in *Intermountain Rate Cases*, 234 U. S., 476, 485, section 4 vests in the Commission the "primary instead of a reviewing function" to determine the propriety of a lesser rate for a longer distance; and section 13 declares that the Commission "shall have the same powers and authority to proceed with any inquiry instituted on its own motion as though it had been appealed to by complaint or petition under any of the provisions of this act, including the power to make and enforce any order or orders in the case, or relating to the matter or thing concerning which inquiry is had excepting orders for the payment of money." Unless formal application be an indispensable prerequisite to the exercise by the Commission of the power granted by the fourth section, its absence or a defect in it could be waived; and it would be waived by the filing of tariffs under the order entered. For the order is permissive merely.

Under the circumstances as set out in the applications it is manifest that it was necessary for the southern lines to shrink their rates south of the Ohio River if they were to participate at all in traffic from points in central freight association territory to the Gulf ports for export, and they adopted the only course left open to them in order to participate in this traffic.

As heretofore stated, the general method of constructing rates between the southern and central freight association territories is by combination on the Ohio River. For many years the rates of the lines south of the Ohio River have deviated from the provisions of the fourth section, both northbound and southbound; and the fourth section applications of the carriers north of the river filed in accordance with the amendment of June 18, 1910, to continue rates in contravention of the rule of the amended fourth section were made for themselves and on behalf of their connections to participate in rates which contravened the provisions of the law. It is true that the departures occurred on the lines of their connections south of the river over which the northern carriers had no control; and in those instances where the Commission has granted relief from the provisions of the fourth section to the southern lines to continue to charge lower rates to New Orleans, for instance, than to intermediate points on domestic traffic from the Ohio River, the northern lines in participating in traffic from central freight association territory to New Orleans based on the combination on the Ohio River are no more liable to suits for damages from shippers at the higher rated intermediate points to New Orleans than they would be subject to such suits for damages from shippers at the higher rated intermediate points in central freight association territory, where the Commission has, in the exercise of the powers granted by Congress, granted fourth section relief to all of the carriers composing the through routes from central freight association territory in the instant case. There does not seem to be merit in the contention of the lines north of the river in this respect.

In view of all the circumstances we hold that the fourth section as amended in 1910 should be construed as applying to carriers participating in a through route; and that the through route, being considered as a unit, must be dealt with as such, and that the Commission has not exceeded its powers in granting the fourth section exemption herein involved. Therefore, in the absence of a showing of error in the issuance of said orders we are of the opinion that the orders should stand. The petition to rescind the above-numbered orders is therefore denied. An appropriate order will be entered.

No. 8348.

HIMMELBERGER-HARRISON LUMBER COMPANY
v.
ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY COMPANY.

Submitted February 16, 1916. Decided April 28, 1917.

Rates charged on certain carloads of rough hardwood lumber from Okolona, Ark., to Morehouse, Mo., there unloaded, sorted, end squared, and stacked, and within the transit period reshipped to St. Louis, Mo., and other points, found unreasonable to the extent that they exceeded the so-called net rate from point of origin to Morehouse, plus the local rates thence to destinations, contemporaneously in effect, which rates would have applied under defendant's subsequently established transit rule. Reparation awarded.

L. S. McDonald for complainant.

Fred G. Wright and *Henry G. Herbel* for defendant.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the lumber business, with its principal office at Cape Girardeau, Mo., and a sawmill at Morehouse, Mo. By complaint, filed September 22, 1915, it alleges that by reason of a rule in defendant's transit tariff restricting outbound shipments it was subjected to the payment of unreasonable and unjustly discriminatory charges for the transportation of 41 carloads of rough hardwood lumber from Okolona, Ark., to Morehouse, during January, June, and July, 1914. Reparation is asked. Rates are stated in cents per 100 pounds.

The shipments, aggregating 1,907,520 pounds, moved on local bills of lading into Morehouse, where the lumber was unloaded, sorted, end squared, and stacked, and within one year reshipped, for the most part, over defendant's line to St. Louis, Mo. The outbound tonnage equaled 85 per cent of the weight of the inbound rough material. Charges were collected on the inbound shipments at the applicable local rate of 18 cents and on the outbound finished product at the local rates applying from Morehouse to final destinations. At the time of movement the rate on lumber from Morehouse to St. Louis was 10 cents. The through rate contemporaneously in effect on lumber from Okolona to St. Louis was 16 cents. The local

rate from Okolona to Morehouse was later increased to 16 cents and the through rate from Okolona to St. Louis to 19 cents, following our decisions in *Northbound Rates on Hardwood from Southwest*, 32 I. C. C., 521, and *Rates on Lumber from Southern Points*, 34 I. C. C., 652.

At the time the shipments moved defendant maintained, and at present maintains, a transit arrangement on rough material, viz, rough lumber, logs, bolts, etc., for stacking, dressing, or manufacture at points on its line and reshipment over its line, applicable between stations in Arkansas and Missouri, under a system of "gross" and "net" rates. The gross rate, which was the same as the local rate on lumber, was collected on the rough material to the milling point in the first instance. Upon shipment of the finished product from the milling point within one year from the date of the expense bills covering the inbound shipment of rough material the difference between the gross and the net rate was to be refunded. It was also necessary that the tonnage of stacked material from the transit point should equal 85 per cent of the inbound rough material. The net rates were made upon a distance scale basis. A net rate of 2 cents was named for distances of 25 miles and under, with an increase of one-half cent for each additional 25 miles up to and including 175 miles, and an increase of 1 cent thereafter for each additional 25 miles up to and including 400 miles. The net rate for 312 miles, the distance from Okolona to Morehouse, was 11 cents.

Upon reshipment, a claim for refund was filed by complainant for the difference between the local rate charged on the rough material into Morehouse and the net rate named in defendant's tariff, but the claim was declined on the ground that under a rule in defendant's tariff no authority existed for a refund when the rate on the outbound product from the transit point to final destination was less than the through rate from point of origin of the rough material to final destination. The rule read as follows:

RESTRICTIONS AS TO OUTBOUND SHIPMENTS.

The through rate on the finished product in effect from the point of origin of the crude material or from the milling point, whichever is higher, at the time it originates to final destination of the finished product will be protected on the weight from milling point, and in addition thereto the rate shown in item No. 16 [the net rate] for the distance specified therein will be assessed on the inbound weight of the crude material to the milling point.

Inasmuch as at the time the shipments moved the through rate on lumber from Okolona to St. Louis, viz, 16 cents, was higher than the local rate from Morehouse to St. Louis, viz, 10 cents, the charges applicable under the transit arrangement should have been based

on a rate of 13 cents on the rough material from Okolona to Morehouse, and a rate of 16 cents on the finished product thence to St. Louis, less the difference between the charges at the gross rate and net rate, or 2 cents, on the rough material into Morehouse. On that basis the shipments in question were undercharged.

Contemporaneously with the movement of the shipments in question defendant maintained, and now maintains, on rough material shipped between points in Arkansas, for stacking, dressing, or manufacture and reshipment over its line to points outside of the state, a rate of 2 cents for distances up to and including 25 miles, with an increase of one-half cent for each additional 25 miles up to and including 400 miles. The rate for a distance of 312 miles was and is 8 cents. These rates are in no wise dependent upon the measure of the rate outbound from the milling point. However, the shipper must sign a contract which, among other things, requires him to pay the local rate on the inbound material in the event that the outbound product is not reshipped over defendant's line within one year. Subsequent to the movement of the shipments defendant reduced the net rates on rough material between stations in Arkansas and Missouri to the basis applicable between stations in Arkansas on interstate traffic. The present net rate on rough material from Okolona to Morehouse, therefore, is 8 cents. The rule assailed was changed subsequently to the movement of the shipments. On May 6, 1916, it was further amended to provide in substance, and again on August 7, 1916, to read specifically, as follows:

APPLICATION OF RATES ON ROUGH MATERIAL FROM POINT OF ORIGIN TO MILLING POINT.

Upon presentation of claim containing evidence as per rules herein, that the required percentage of manufactured product, as per item No. 8, has been reshipped from milling point via the St. Louis, Iron Mountain & Southern Ry., within one year after date of original paid freight bill, covering movement from point of origin of rough material to milling point, the difference between the charges paid to milling point and the charges on basis of the rates named in item No. 16 [the net rate] will be refunded by agent on authority of auditor of freight receipts, except where the rate named herein from point of origin of rough material to the milling point, plus the rate on the manufactured product from the milling point to final destination, makes less than the through rate from the point of origin of the rough material to final destination of the manufactured product, the rate from the point of origin of the rough material to the milling point will be increased sufficiently to protect the through rate from point of origin of the rough material to the final destination of the finished product, in effect on the date the rough material originates.

The present transit arrangement is apparently satisfactory to complainant.

Complainant contends that the rate of 13 cents charged on the rough lumber in question from Okolona to Morehouse, in connection with the local rate outbound, was unreasonable to the extent that it exceeded the subsequently established net rate of 8 cents; and that the rule involved was unreasonable and unjustly discriminatory.

Defendant observes that in times past carriers thought that a limitation should be put in transit tariffs to prevent long hauls on rough material into transit points, for the reason that a longer haul on the rough material of heavy tonnage and a shorter haul on the finished product of reduced tonnage increased the cost to the carrier over a shorter haul of the rough material and a longer haul of the finished product; and insists that Morehouse was in no different situation than any other point which secured rough material from distant interstate points.

In *Vandenboom-Stimson Lumber Co.* v. *St. L., I. M. & S. Ry. Co.*, 38 I. C. C., 432, we had under consideration defendant's rates for the transportation of hardwood bolts and logs in carloads from points on its lines in the states of Arkansas, Louisiana, and Oklahoma to Memphis, Tenn. In that case we prescribed for distances of 325 miles and over 300 miles a rate of 10.5 cents, which rate includes a bridge toll of 1 cent per 100 pounds. Following our decision in that case, defendant reduced the rates on hardwood bolts and logs from points in Arkansas to Memphis, but did not make any reductions in the rates on rough lumber. For many years defendant has applied between points in Arkansas and Missouri equal rates into transit points on rough lumber, logs, bolts, etc., for stacking, dressing, or manufacture and reshipment over its line. We are not convinced that 8 cents would have been the maximum reasonable rate to apply on this traffic from Okolona to Morehouse in connection with the outbound local rate. No evidence was offered to show that complainant was damaged in any specific sum by reason of the lower rates in effect on rough material milled in transit within the state of Arkansas, the product of which was shipped to interstate destinations. We find, however, that the rule attacked was unreasonable to the extent that it provided for the assessment of higher total charges than would have accrued under the present rule at the rates in effect at the time the shipments moved. We further find that the charges legally applicable to the shipments in question were unreasonable to the extent that they exceeded those which would have accrued on the basis of our conclusions herein; that complainant made the shipments as described and paid and bore charges thereon at the rate herein found to have been unreasonable; that it has been damaged to the extent of the difference between the charges legally applicable and the charges which would

have accrued on the basis of our conclusion herein; and that it is entitled to reparation with interest. The exact amount of reparation due can not be determined on this record. Complainant should prepare a statement showing the details of the shipments in accordance with rule V of the Rules of Practice, which statement should be submitted to defendant for verification. Upon receipt of a statement so prepared and verified we shall consider the entry of an order awarding reparation. Defendant may waive collection of the outstanding undercharges. No order for the future is necessary.

No. 8762.

WILCOX MERCANTILE COMPANY
v.
WABASH RAILWAY COMPANY.

Submitted July 17, 1916. Decided April 28, 1917.

Charges collected on a carload of wheat from Wilcox, Mo., to Chicago, Ill., not found to have been illegal and not shown to have been unreasonable. Complaint dismissed.

William Ritchie for complainant.
W. A. Hopkins for defendant.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant, William Ritchie, a resident of St. Joseph, Mo., was formerly engaged in the grain business at Wilcox, Mo., under the name of the Wilcox Mercantile Company. By complaint, filed March 29, 1916, he alleges that the charges collected by defendant for the transportation of a carload of bulk wheat from Wilcox to Chicago, Ill., in July, 1915, were unreasonable and illegal. Reparation is asked.

The shipment, weighing 70,170 pounds, was loaded in a car the marked capacity of which was 80,000 pounds. Charges were collected at a rate of 15¾ cents per 100 pounds and a weight of 76,000 pounds, under a rule in defendant's tariff providing a minimum of 4,000 pounds less than marked capacity of the car used. The rate applied was legally applicable and is not attacked, complainant's

contention being that the charges should have been based on the actual weight.

Complainant testified that prior to making the shipment he advised defendant's agent that he had about 72,000 pounds of wheat to ship and was informed that defendant did not own or have in its possession any cars of marked capacity between 60,000 and 80,000 pounds; that it was not permissible to load a 60,000-pound capacity car over 66,000 pounds, and that it would be necessary to use an 80,000-pound capacity car for the shipment. A car of that capacity was accordingly ordered.

Defendant states that, while it owns no cars of less than 80,000 pounds marked capacity in which the shipment could have been loaded, various other lines have cars of 70,000 pounds capacity which could have accommodated the shipment, and that had such a car been ordered by complainant it would have been necessary for defendant under its rules either to furnish a car of that capacity or to assess charges on basis of the actual weight of the shipment if a car of greater capacity was furnished. Complainant testified that he had no knowledge of the rule mentioned, and that he did not order a 70,000-pound capacity car because he knew defendant owned no such cars. Complainant appears not to have been certain as to the amount of wheat he intended to ship, his estimate having been based upon statements made to him by the vendor farmers. A weight of 88,000 pounds, subject to correction, was inserted in the bill of lading.

The fact that complainant may have been misled by defendant's agent into believing that it was necessary for him to order a larger car than was required affords no ground for reparation.

We find that the charges collected were legally applicable, and are not shown to have been unreasonable. An order dismissing the complaint will be entered.

No. 8592.

LA CROSSE SHIPPERS' ASSOCIATION

v.

CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY ET AL.

FOURTH SECTION APPLICATIONS Nos. 458, 542, 1548, 1952. 2045, AND 3965.

Submitted June 2, 1916. Decided April 28, 1917.

1. Rates on pig iron in carloads from Birmingham, Ala., Chattanooga, Tenn., and grouped points taking the same rates, to La Crosse, Wis., found to be unreasonable and unduly prejudicial.
2. Fourth section relief denied.

S. J. Bolton and *W. W. West* for complainant.

R. B. Scott and *Kenneth F. Burgess* for Chicago, Burlington & Quincy Railroad Company.

C. C. Wright and *R. H. Widdicombe* for Chicago & North Western Railway Company.

O. W. Dynes and *J. N. Davis* for Chicago, Milwaukee & St. Paul Railway Company.

William Burger for Louisville & Nashville Railroad Company.

A. W. Gill for Alabama Great Southern Railroad Company and Cincinnati, New Orleans & Texas Pacific Railway Company.

Report of the Commission.

By the Commission:

Complainant is a corporation composed of individuals, firms, and corporations, located at La Crosse, Wis. By complaint, filed January 13, 1916, it alleges that defendants' rates on pig iron in carloads to La Crosse, from Birmingham, Ala., Chattanooga, Tenn., and La Follette, Tenn., and grouped points taking the same rates, are unreasonable and unduly prejudicial. The establishment of reasonable and nonprejudicial rates for the future is asked. Rates are stated in amounts per long ton.

La Crosse, located on the Mississippi River in western Wisconsin, is served by the Chicago, Burlington & Quincy, Chicago & North Western, and Chicago, Milwaukee & St. Paul railroads. At the time the complaint was filed the following rates applied on pig iron in carloads to La Crosse: From Birmingham, $5.35; from Chattanooga,

$5.10; and from La Follette, $4.85. Reference to these points embraces the groups which they represent. A reduction of 35 cents in each of the rates was asked. On March 10, 1916, a rate of $4.50 was made applicable from La Follette, and at the hearing the complaint was withdrawn with respect to this group. Contemporaneously the rate from Chattanooga was reduced to $5. Prior to the reduction in the rate from Chattanooga the rates on pig iron from that point to points on the Ohio River and beyond were fixed at a differential under the rate from Birmingham. Subsequently the spread was increased by 10 cents, the amount by which the rate from Chattanooga was reduced. For the purposes of this case it will suffice to consider merely the rate from Birmingham.

In *Sloss-Sheffield Steel & Iron Co.* v. *L. & N. R. R. Co.*, 30 I. C. C., 597, 35 I. C. C., 460, we ordered a reduction of 35 cents in the rates on pig iron from Alabama and Tennessee points to points on the Ohio River and in central freight association territory. In adjusting their rate structures defendants made a similar reduction to points in northern Illinois, in what is known as prorating territory; to upper Mississippi River crossings in Iowa; and to certain points in eastern Wisconsin. Complainant contends that a comparison of the rates to these points with the rate to La Crosse demonstrates that the latter rate is unreasonable and unduly prejudicial. The following table is illustrative:

From Birmingham to—	Distance.	Rate.	Earnings per ton-mile.
	Miles.		*Mills.*
La Crosse, Wis	891	$5.35	6
Green Bay, Wis	850	4.60	5.41
Stoughton, Wis	770	4.40	5.71
Madison, Wis	785	4.40	5.62
Rock Island, Ill	708	4.00	5.65
Davenport, Iowa	711	4.00	5.62
Dubuque, Iowa	781	4.00	5.12

Complainant also compares the joint rate to La Crosse with the combination rate on St. Louis, Mo., of $5.40, and stresses the fact that there is a bridge charge of 67.2 cents at that point, leaving to the line-haul carriers a net revenue of but $4.728. The tariffs show the local bridge toll to be 60 cents. It is stated that the rate assailed equals the combination of rates to and from the Ohio River, while the rates to the territory represented by the points in the above table are lower than the combination rates by from 43 cents to 85 cents. It is contended that as the rates from La Follette and Chattanooga have been reduced no reason exists for not lowering the rate from Birmingham. It is observed that in several instances the rate to

La Crosse produces ton-mile earnings which are in excess of earnings accruing under rates to intermediate points.

A member of the complainant averred that he met competition of manufacturers located at points within central freight association territory, many of whom receive their pig iron from the territory of origin here involved.

Defendants state that the difference between the La Crosse rate and the eastern Wisconsin rate is due to the fact that the lake points and contiguous interior related points are embraced within the Illinois prorating territory which is considered a part of central freight association territory, and that Rock Island and Davenport, points cited by complainant, are treated as within central freight association territory. Madison, also cited, is not within that territory, nor is it in prorating territory, but defendants state that the rate to that point is forced by the Illinois Central Railroad, which carrier has a direct line from Birmingham and maintains Madison on the Milwaukee, Wis., basis. Also that the reductions in the through rates from La Follette and Chattanooga followed the reductions in the rates to the Ohio River, which reductions made combination rates based on the Ohio River lower than the joint through rates. Exhibits were submitted by defendants comparing the rate assailed with rates from Birmingham and other producing territories to points in Wisconsin, Minnesota, and Iowa. However, the rates referred to were not affected in any wise by our decision in *Sloss-Sheffield Steel & Iron Co.* v. *L. & N. R. R. Co.*, *supra.* Some testimony was adduced with a view of showing a dissimilarity of circumstances and conditions surrounding rates to La Crosse and those into central freight association territory. The difference shown is too slight to merit consideration.

Upon the facts of record we find that the rates assailed are, and for the future will be, unreasonable and unduly prejudicial to the extent that they exceed or may exceed rates of $5 per long ton from Birmingham and $4.75 per long ton from Chattanooga and grouped points taking the same rates, to La Crosse.

Rates to certain points in Wisconsin intermediate to La Crosse from Birmingham, Chattanooga, and La Follette are in contravention of the long-and-short-haul rule of the fourth section of the act, and portions of fourth section applications protecting the departures were assigned for hearing with this case. Defendants offered no justification for the higher intermediate rates and stated that the violations would be corrected. The applications will be denied to the extent that they are involved.

Appropriate orders will be entered.

No. 8733.

CLEVELAND EXCELSIOR COMPANY

v.

SOUTHERN RAILWAY COMPANY ET AL.

Submitted November 13, 1916. Decided April 28, 1917.

Rate on excelsior in carloads from Cleveland, Tenn., to Cincinnati, Ohio, not shown to be unjustly discriminatory or unduly prejudicial. Complaint dismissed.

S. N. Varnell for complainant.

Alexander M. Bull for Southern Railway Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in manufacturing excelsior at Cleveland, Tenn. By complaint, filed March 13, 1916, as amended, it alleges that defendants' rate of 17 cents per 100 pounds on excelsior, in carloads, from Cleveland to Cincinnati, Ohio, is unjustly discriminatory and unduly prejudicial as compared with rates on like traffic from Mobile, Ala., of 19 cents per 100 pounds to Cincinnati, and 17 cents per 100 pounds to Louisville, Ky. At the hearing it was shown that defendant Louisville & Nashville Railroad does not participate in the movement of excelsior from Cleveland to Cincinnati, and the allegations of unjust discrimination and undue prejudice as to that defendant were abandoned.

Cleveland is a local point on the Southern Railway, 29 miles northeast of Chattanooga, Tenn. Excelsior from Cleveland to Cincinnati moves over the Southern in connection with the Cincinnati, New Orleans & Texas Pacific Railway, 367 miles. The distance from Mobile to Cincinnati over the lines of the same carriers is 776 miles. Complainant's contention is that, distances considered, the rate to Cincinnati from Cleveland is too high as compared with the rate from Mobile to the same point.

Subsequently to the hearing the commodity rates on excelsior applicable in connection with the Southern from Mobile to Cincinnati and Louisville were canceled, thereby making applicable by way of the Southern and the Cincinnati, New Orleans & Texas Pacific class D rates, governed by the southern classification, of 23 cents per

100 pounds to Louisville and 25 cents per 100 pounds to Cincinnati. These rates are now in effect.

No evidence was adduced in support of the allegation of unjust discrimination. Any undue prejudice which may have existed in favor of Mobile has been removed by the cancellation of the commodity rates in question. An order dismissing the complaint will be entered.

No. 8644.

ACME MILLS

v.

LOUISVILLE & NASHVILLE RAILROAD COMPANY.

PORTION OF FOURTH SECTION APPLICATION No. 1952.

Submitted July 28, 1916. Decided April 28, 1917.

Charges on a tank-car load of blackstrap molasses from Mobile, Ala., to Hopkinsville, Ky., found to have been unreasonable. Reparation awarded.

J. B. McLemore for complainant.

William Burger for defendant.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the manufacture of flour, poultry feed, and stock feed at Hopkinsville, Ky. By complaint, filed February 11, 1916, it alleges that the charges collected by defendant on a tank-car load of molasses shipped from Mobile, Ala., to Hopkinsville, February 28, 1914, were unreasonable, unduly prejudicial and in violation of the fourth section.

Reparation is asked and the establishment of a rate for the future not in excess of the rate to Evansville, Ind., and Henderson, Ky. Rates are stated in cents per 100 pounds.

The shipment consisted of imported blackstrap molasses, worth not more than 8 cents per gallon, and moved over defendant's line through Nashville, Tenn. It weighed 93,900 pounds, and charges were collected in the sum of $558.71 at the fifth-class rate of 59 cents, plus a wharfage charge at Mobile of one-half cent. Defendant's

tariff provided for the absorption of all charges entailed in the movement from wharves in Mobile to its tracks. The shipment was overcharged $4.70, the amount of the Mobile & Ohio Railroad's wharfage charge which defendant failed to absorb.

Hopkinsville is 553 miles from Mobile over defendant's line. At the time of movement a through rate of 21 cents applied from Mobile and New Orleans, La., to Henderson and Evansville. Hopkinsville is intermediate from Mobile to Henderson and Evansville. The aggregate of intermediate rates to and from Nashville was 37 cents: 21 cents to Nashville and 16 cents beyond. These departures from the provisions of the fourth section were protected by appropriate fourth section application that was heard with the complaint. Contemporaneously a rate of 19 cents applied from Mobile to Clarksville, Tenn., a point not intermediate over the route of movement, and a rate of 14 cents from Clarksville to Hopkinsville. In the absence of a through rate this combination of rates would have applied under rule 5 (*b*) of Tariff Circular 18-A. Effective October 15, 1916, defendant established commodity rates on blackstrap molasses in tank-car loads from Mobile to all points on its line between Nashville and Evansville on basis of the lowest combination, thereby conforming to the rule of the fourth section prohibiting the charging of a through rate in excess of the aggregate of the intermediate rates subject to the act. At the present time there are rates on the commodity involved from Mobile to Hopkinsville of 33 and 35 cents, dependent upon declared values of 8 cents or less per gallon or in excess of 8 cents per gallon. These rates are applicable over the lines of the defendant and exceed the sum of the rates of 16 cents, also applicable over its rails to Clarksville, and the local rate of 14 cents beyond. The present rates, therefore, are in excess of the lowest combination and defendant should correct them at once. A rate of 25 cents also applied from New Orleans to Hopkinsville, to which Mobile is intermediate over defendant's line. The latter departure from the long-and-short-haul rule of the fourth section is likewise protected by an appropriate fourth section application that was not heard with the complaint.

Complainant contends that the rate charged was unreasonable and unduly prejudicial to the extent that it exceeded 21 cents. It submits for comparison the rates and per car and per car-mile revenue on grease, acid, turpentine, wood alcohol, and cottonseed foots, in tank-car loads, from Gulf ports to Ohio River crossings, Nashville and Chattanooga, Tenn., and between other points in the southeastern states. It is admitted that these commodities are not competitive with blackstrap molasses, their principal point of similarity thereto being their transportation in tank-car loads.

Blackstrap molasses is one of the ingredients of animal and poultry feeds which complainant manufactures at Hopkinsville, and markets in competition with other manufacturers of these commodities located at Nashville, St. Louis, Mo., Evansville, Henderson, and Cairo, Ill. Complainant's prices are largely controlled by the prevailing prices of its competitors. At the time the shipment in question moved complainant was on a parity with its competitors with respect to rates on all ingredients of the feeds except molasses. But as complainant puts 300 pounds of blackstrap molasses into each ton of feed it claims that its competitors had an advantage of 38 cents in the rates on blackstrap molasses, which meant a disadvantage to it of $1.14 per ton on the feed in which this molasses was used. However, neither the other ingredients used by complainant nor those used by competing manufacturers are shown, and we can not assume that they are the same, or, if they are, that they are used in identical proportions. There is no showing that complainant had to shrink its profits on all or any particular portion or portions of the feeds in which this molasses was used in order to effect sales in competition with manufacturers at Nashville, Henderson, Evansville, St. Louis, or Cairo.

Defendant admits that the rate charged was unreasonable to the extent that it exceeded 33 cents, the combination of local rates contemporaneously maintained to and from Clarksville, and is willing to make reparation on that basis, which, it insists, affords Hopkinsville reasonable rates. It compares, with favorable results, the present rates to Hopkinsville with rates on the same commodity from Mobile to numerous equidistant or less distant points in the southeastern states applying over its line and over the lines of other carriers.

We find that the rate assailed was unreasonable to the extent that it exceeded 33 cents per 100 pounds; that complainant made the shipment as described and paid and bore the charges thereon at the rate herein found to have been unreasonable; that it has been damaged to the extent of the difference between the charges paid and the charges that would have accrued at the rate herein found to have been reasonable; and that it is entitled to reparation in the sum of $248.84, with interest. This sum includes the overcharge mentioned.

Those portions of Fourth Section Application No. 1952, filed by the Louisville & Nashville Railroad Company, wherein authority is sought to continue lower rates on molasses in tank cars from Mobile to Henderson and Evansville than to Hopkinsville, and from or to other intermediate points, and also to continue rates on molasses in tank cars from Mobile to Hopkinsville that exceed the aggregate of the intermediate rates, were heard with the complaint.

The rates from Mobile to Evansville and Henderson are the same as, or are made with relation to, the rates to other Ohio River crossings and St. Louis, and the rates from Mobile to these destinations are made with relation to the rate from New Orleans and other Gulf ports. It is contended that the rates on all molasses from Mobile and other Gulf ports to the Ohio River crossings and St. Louis have been depressed below normal because of actual and potential water competition on the Gulf of Mexico, Mississippi Sound, Mississippi and Ohio rivers. It is further maintained that the rates on molasses in tank-car loads are controlled by the rates on molasses in barrels, and while molasses in tanks may not move by water, still any increase in the rates on molasses in tank-car loads might result in the movement of the traffic in barrels. The rates on molasses in carloads from New Orleans and Mobile to the Ohio River crossings and St. Louis are not observed as maxima at intermediate points on the lines of other carriers operating between these points. These departures from the provisions of the fourth section are protected by appropriate applications pending. Complainant has not shown that it has been damaged by reason of the alleged discrimination in favor of its competitors at Evansville, Henderson, St. Louis, Cairo, or Nashville, and, considering all the circumstances, we do not deem it advisable to undertake at this time and upon the record in this case to determine the fourth section question presented. That question will be reserved for decision in a more comprehensive proceeding involving the fourth section applications of all carriers operating between Gulf ports and Ohio River crossings, Nashville, and St. Louis. In view of the fact that the Louisville & Nashville Railroad, as well as the other carriers operating between the Gulf ports and the Ohio River crossings, is readjusting rates on classes and commodities to conform to the principles announced by the Commission in *Fourth Section Violations in the Southeast*, 30 I. C. C., 153, no order for the future will be entered.

An appropriate order will be entered.

No. 8671.

ALUMINUM MANUFACTURING COMPANY

v.

ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY ET AL.

Submitted July 31, 1916. Decided April 28, 1917.

Ratings prescribed in western classification on cast aluminum kitchen utensils in less than carloads, not found to be unreasonable or unjustly discriminatory. Complaint dismissed.

J. H. Henderson and *Dwight N. Lewis* for complainant.
R. C. Fyfe for defendants.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the manufacture of cast aluminum kitchen utensils at Des Moines, Iowa. By complaint, filed February 21, 1916, it attacks as unreasonable and unjustly discriminatory ratings on cast aluminum kitchen utensils in less than carloads, prescribed in the western classification. The establishment of reasonable and nondiscriminatory ratings for the future is asked.

The western classification rates aluminum ware, undecorated, nested, in barrels or boxes, in less than carloads, first class; not nested, one and a half times first class. These ratings apply to cast aluminum articles as well as sheet aluminum ware. Cast aluminum ware is molded in one piece from pig aluminum; sheet aluminum ware is stamped or spun from sheet metal.

The official and southern classifications rate cast and sheet aluminum ware, undecorated, nested, in barrels or boxes, in less than carloads, second class; not nested, first class.

Complainant markets its products chiefly at St. Louis, Mo., Peoria and Chicago, Ill., Milwaukee, Wis., and St. Paul, Minneapolis, and Duluth, Minn., and other points on the Mississippi River and east thereof, only a very small quantity being sold at western points. In 1915 it shipped 40 tons of cast aluminum ware to points on and east of the Mississippi River and about 8 tons to Kansas City, Mo., and San Francisco, Cal. Its shipments average about 500 pounds each. To all of these points traffic from Des Moines is governed by the western classification; from Erie, Pa., Cleveland and Sidney, Ohio, at which points complainant's principal competitors are located, the official classification governs. The gravamen of the complaint is that

by reason of these different ratings complainant's competitors in official classification territory can ship to Chicago and points west as far as the Mississippi River at rates relatively lower than those applicable to complainant's shipments. The rates on aluminum ware to Chicago from Des Moines, Erie, and Sidney are as follows: From Des Moines, 358 miles, 90 cents, not nested, and 60 cents, nested; from Erie, 435 miles, 47.3 cents, not nested, and 41 cents, nested: and from Sidney, 246 miles, 38.9 cents, not nested, and 33.6 cents, nested. To Peoria the rates from Des Moines, 250 miles, are 82.5 cents, not nested, and 55 cents, nested; from Erie, 528 miles, 53.6 cents, not nested, and 46.7 cents, nested; and from Sidney, 308 miles, 43.1 cents, not nested, and 36.8 cents, nested.

Complainant contends that because of the higher ratings prescribed on aluminum ware by the western classification than by the official classification it is subjected to the payment of unreasonable and unjustly discriminatory charges. It shows that both the western and the official classifications rate aluminum in pigs or slabs, in less than carloads, third class, and sheet or plate aluminum second class. It states that its eastern competitors have an advantage due to location in that they are nearer the source of supply of raw aluminum, which is obtained from New Kensington, Pa., Niagara Falls, N. Y., and Marysville, Tenn.

Generally speaking, cast aluminum ware is worth twice as much as and weighs three times more than sheet aluminum ware. Cast aluminum ware is practically indestructible, while sheet aluminum ware is easily damaged in transit. Complainant does not manufacture sheet aluminum ware and makes no complaint as to the ratings applicable thereto. It urges, however, that if the ratings on sheet aluminum ware are reasonable cast aluminum ware may properly take a lower rating because of its greater weight and less transportation risk. The witness for the Western Classification Committee testified that in making these ratings the committee dealt with the entire line of aluminum ware, which includes not only cast and light household ware but also the so-called hotel ware which is made of extra heavy sheet aluminum and asserted that a separate classification of light sheet ware would justify even higher ratings on that commodity than at present in effect.

Complainant requests the same ratings on cast aluminum ware as apply upon enameled ware, tinware, and sheet iron or steel ware, which are rated first class, not nested, and second class, nested. Cast aluminum ware is from two to three times more valuable than the best grade of enameled ware and greatly in excess of the value of the ordinary run of enameled ware and of tinware. Complainant contends, however, that the differences in values between these articles are offset by the greater liability to damage of enameled ware

and tinware, and that tinware averages much less in weight than cast aluminum ware. The volume of movement of aluminum ware is small as compared with that of enameled ware and tinware.

Complainant cites a number of other articles which are rated lower than cast aluminum, such as galvanized iron and copper wash boilers, japanned ware, pottery, earthenware, stoneware, and glassware. No evidence was offered, however, to show the relative transportation conditions as between the articles cited and cast aluminum ware.

The entire line of aluminum ware, including cast, light household sheet, and heavy hotel sheet, averages 11 pounds per cubic foot, and in normal times is valued at $2.75 per cubic foot, or 25 cents per pound. Defendants show that the second-class rating asked by complainant on cast aluminum ware, nested, is the same as that now applicable on plate and sheet aluminum, angles, bars, and rods, which range in weights from 60 to 120 pounds per cubic foot and in value from 22 to 25 cents per pound. They also show that scrap sheet aluminum, which weighs about 44 pounds per cubic foot, and scrap aluminum borings, which weigh 55 pounds per cubic foot, are rated second class; and that aluminum rivets, which weigh from 65 to 75 pounds per cubic foot, and pipe fittings, which weigh from 40 to 60 pounds per cubic foot and are valued at from 26 to 30 cents per pound, are rated first class. Defendants assert that the articles in question are analogous to and are rated the same as copper cooking utensils.

The fact that lower ratings apply on these articles in the official than in the western classification does not of itself justify a finding that the ratings in question are unreasonable or unjustly discriminatory. In *Stewart & Clark Mfg. Co.* v. *A., T. & S. F. Ry. Co.*, 26 I. C. C., 361, we said:

It is a well-known fact, however, that in the different classification territories conditions of transportation vary materially. For this and other reasons a rating in one classification is not of itself a matter of controlling importance in determining the reasonableness of a rating in another classification on the same article. Besides, it is generally true that somewhat higher rates prevail in western than in official classification territory.

The ratings in question were considered in the *Western Classification Case*, 25 I. C. C., 442. Western classification No. 51 increased the rating on aluminum cooking utensils, not nested, less than carloads, from first class to one and a half times first class, western classification No. 50 having provided for them at first class, less than carload, boxed, either nested or not nested. We permitted the increased rating to become effective.

The evidence before us does not justify a finding that the present ratings are unreasonable or unjustly discriminatory, and an order dismissing the complaint will be entered.

No. 8270.

H. M. STOCKING

v.

MINNEAPOLIS, ST. PAUL & SAULT STE. MARIE RAILWAY COMPANY.

Submitted October 5, 1916. Decided April 28, 1917.

Rate of 7.5 cents per 100 pounds charged on 14 carloads of wood bolts from Black River Spur, Wis., to Minnesota Transfer, Minn., found to have been unreasonable. Reparation awarded.

Stanley B. Houck for complainant.

A. H. Lossow for defendant.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is engaged in the manufacture and sale of box shooks and wooden specialties at Minneapolis, Minn., under the trade name of H. M. Stocking & Company. By complaint, filed August 27, 1915, he alleges that the rate of 7.5 cents per 100 pounds charged by defendant for the transportation of 14 carloads of wood bolts from Black River Spur, Wis., to Minnesota Transfer, Minn., during February, 1914, was unreasonable to the extent that it exceeded 4.75 cents per 100 pounds. Reparation is asked. Rates are stated in cents per 100 pounds.

The shipments aggregated 757,000 pounds and moved over defendant's line, 153 miles. Charges were collected in the sum of $567.77, based on a rate of 7.5 cents, legally applicable. On July 1, 1914, a rate of 4.75 cents was established from Black River, Wis., to Minnesota Transfer, and subsequently, on July 27, 1915, the same rate was established from Black River Spur.

Complainant contends that the rate charged, which also applied on lumber in carloads, was unreasonable to the extent that it exceeded 4.75 cents. Defendant admits that the rate charged was unreasonable and expresses willingness to make reparation on basis of the 4.75-cent rate.

The commodity shipped consisted of wood bolts, principally hemlock, 4½ feet long and from 6 to 14 inches in diameter, and was used in manufacturing box material. They were of a very low grade and value, constituting about one-half of a quantity for which com-

plainant paid $125. Based on 54,000 pounds, the average loading of the cars used, the rate charged yielded 9.8 mills per ton-mile and 26.5 cents per car-mile. Complainant cited carload rates maintained by defendant of 3.1 cents on saw logs and bolts, in Wisconsin, intrastate, for 155 miles, and 4.2 cents on pulp wood in Minnesota, intrastate, for 155 miles. At the time of movement a rate of 4 cents applied on fuel wood in carloads from and to the points involved.

In *Pulp & Paper Mfrs. Traffic Asso.* v. *C., M. & St. P. Ry. Co.*, 27 I. C. C., 83, involving rates on pulp wood from Minnesota to Wisconsin and the upper peninsula of Michigan, we prescribed a scale of maximum proportional distance rates under which the rate for 155 miles is 4.42 cents.

We find that the rate assailed was unreasonable to the extent that it exceeded 4.75 cents per 100 pounds; we further find that complainant made the shipments as described and paid and bore the charges thereon at the rate herein found to have been unreasonable; that it has been damaged to the extent of the difference between the charges paid and the charges that would have accrued at the rate herein found to have been reasonable; and that it is entitled to reparation in the sum of $208.20, with interest.

An order awarding reparation will be entered, but as the rate herein found reasonable has been in effect for more than two years no order for the future is necessary.

No. 8103.

ROY CAMPBELL

v.

ST. LOUIS, BROWNSVILLE & MEXICO RAILWAY COMPANY ET AL.

Submitted February 2, 1916. Decided April 28, 1917.

Defendants' rule, under which stated refrigeration charges are assessed notwithstanding shippers furnish initial icing and request that no further ice be furnished, not shown to have been or to be unreasonable. Complaint dismissed.

Frank H. Wash for complainant.

R. C. Fulbright for St. Louis, Brownsville & Mexico Railway Company and its receiver.

G. D. Shafer and *Joseph M. Bryson* for Missouri, Kansas & Texas Railway Company and Missouri, Kansas & Texas Railway Company of Texas and its receiver.

Report of the Commission.

By the Commission:

Complainant, a resident of San Antonio, Tex., is engaged in the produce business. By complaint, filed June 22, 1915, he alleges that defendants' rule relative to the assessment of refrigeration charges on cabbages and other vegetables in refrigerator cars, the tanks of which contain ice, notwithstanding shipper's instructions not to re-ice in transit, is unreasonable and subjects complainant to the payment of unreasonable charges. At the hearing complainant requested that the defendants be authorized to waive collection of a refrigeration charge of $61.50 which they are seeking to collect on a carload of cabbages shipped March 18, 1914, from San Benito, Tex., to St. Louis, Mo. The establishment of a rule under which shippers will be required to pay only for ice and refrigeration actually requested by them and actually furnished by the carriers is asked.

The shipment, which was initially iced by complainant, was originally consigned to Waco, Tex., with instructions on the bill of lading, "Do not re-ice," and was diverted en route to Denison, Tex., with the same instructions. Upon arrival at Denison it was reconsigned to St. Louis with instructions "Do not ice. Keep vents sealed open. Ice plugs out. Strictly ventilation." It moved: St. Louis, Brownsville & Mexico Railway to Sinton, Tex.; San Antonio & Aransas

Pass Railway to Waco; Missouri, Kansas & Texas system to St. Louis. The San Antonio & Aransas Pass Railway is not a party defendant. The freight charges collected are not in issue. A refrigeration charge of $61.50 was assessed in accordance with the defendants' tariffs, which provided in connection with this charge that—

> No instructions from shippers as to icing or re-icing are necessary on commodities subject to this tariff. The acceptance of any special instructions restricting the carriers will be optional with the carriers, and when tendered with shipments by the shippers, shall bear on the shipping order and on bill of lading, under the signature of the shipper, notation as follows: "Shipper's instructions."
>
> When the shippers instruct that commodities loaded in cars, the tanks of which contain ice, are not to be re-iced in transit, the full refrigeration rates published herein shall apply.

This rule, revised in part subsequently to the movement, now provides that shippers must declare in writing whether shipments are tendered by them for transportation under refrigeration or ventilation, and that no instructions whatever will be accepted from shipper, owner, or consignee for the re-icing of cars at any intermediate stop or consigning point, or at final destination before shipment is in process of unloading.

Complainant does not attack the charge of $61.50 when refrigeration service is performed by defendants, but contends that charges should be based upon the actual cost of ice requested by shipper and furnished by the carriers, and that when the shipper furnishes the initial ice and requests that no ice be supplied, no refrigeration charge should be assessed. It does not clearly appear of record whether or not the car involved was in fact re-iced in transit. Complainant assumes that the instructions not to re-ice were followed. He states that the shipment arrived at St. Louis with ice plugs out and vents open, but admits that he did not personally handle the shipment at destination. Defendants maintain that it is immaterial whether the car was or was not re-iced in transit. Their witnesses testified that they did not know whether this shipment was re-iced or not, but that, regardless of shipper's instructions to the contrary, all cars are examined and re-iced at all regular re-icing stations, if necessary.

In *Arlington Heights Fruit Exch.* v. *S. P. Co.*, 20 I. C. C., 106, we said:

> Both the courts and the Commission have decided that carriers must, under such circumstances, be prepared to furnish reasonable refrigeration upon reasonable request. Now if it is the duty of these defendants to furnish this refrigeration service, then they may insist upon performing the entire service. The shipper has no right to provide refrigeration himself to-day, and call upon the railroad company for that service to-morrow. To permit such a course is

to demoralize the service of the defendants and prevent them from discharging their duty with economy and efficiency.

The record shows that ample facilities are provided by defendants at San Benito for furnishing ice and refrigeration service.

Complainant's contention that carriers are entitled to charge only for the cost of ice actually furnished is concluded by *Railroad Commission of California* v. *A. G. S. R. R. Co.*, 32 I. C. C., 17, and other cases, in which we held that carriers are entitled, in addition to the actual cost of ice furnished, to compensation for the haulage of the ice, the cost of supervision, repairs to bunkers, extra switching, and to an allowance for depreciation of cars, damage claims, and profit. In *Refrigeration Charges on Fruits and Vegetables*, 29 I. C. C., 653, involving refrigeration charges on fruits and vegetables from points in Colorado to points in Kansas, we permitted the discontinuance of the so-called "shippers' icing plan" and the substitution of a flat refrigeration charge.

Complainant admits that his shipments are usually forwarded to interstate points under full refrigeration, and that the shipment in question was an exceptional one.

We find that neither the rule assailed nor the charges applicable thereunder are shown to have been or to be unreasonable, and an order will be entered dismissing the complaint.

No. 9076.

C. ELTON JAMES ET AL.

v.

WASHINGTON & OLD DOMINION RAILWAY ET AL.

Submitted January 6, 1917. Decided May 5, 1917.

Upon complaint that the withdrawal of the transfer arrangement heretofore existing between the Washington & Old Dominion Railway and the Capital Traction Company subjects complainants to unjust, unreasonable, and discriminatory fares; *Held,* The Capital Traction Company is not subject to the jurisdiction of this Commission. Case held open for 15 days.

E. Hilton Jackson, *James T. Sherier*, and *R. H. Turner* for complainants.

G. Thomas Dunlop for Capital Traction Company.

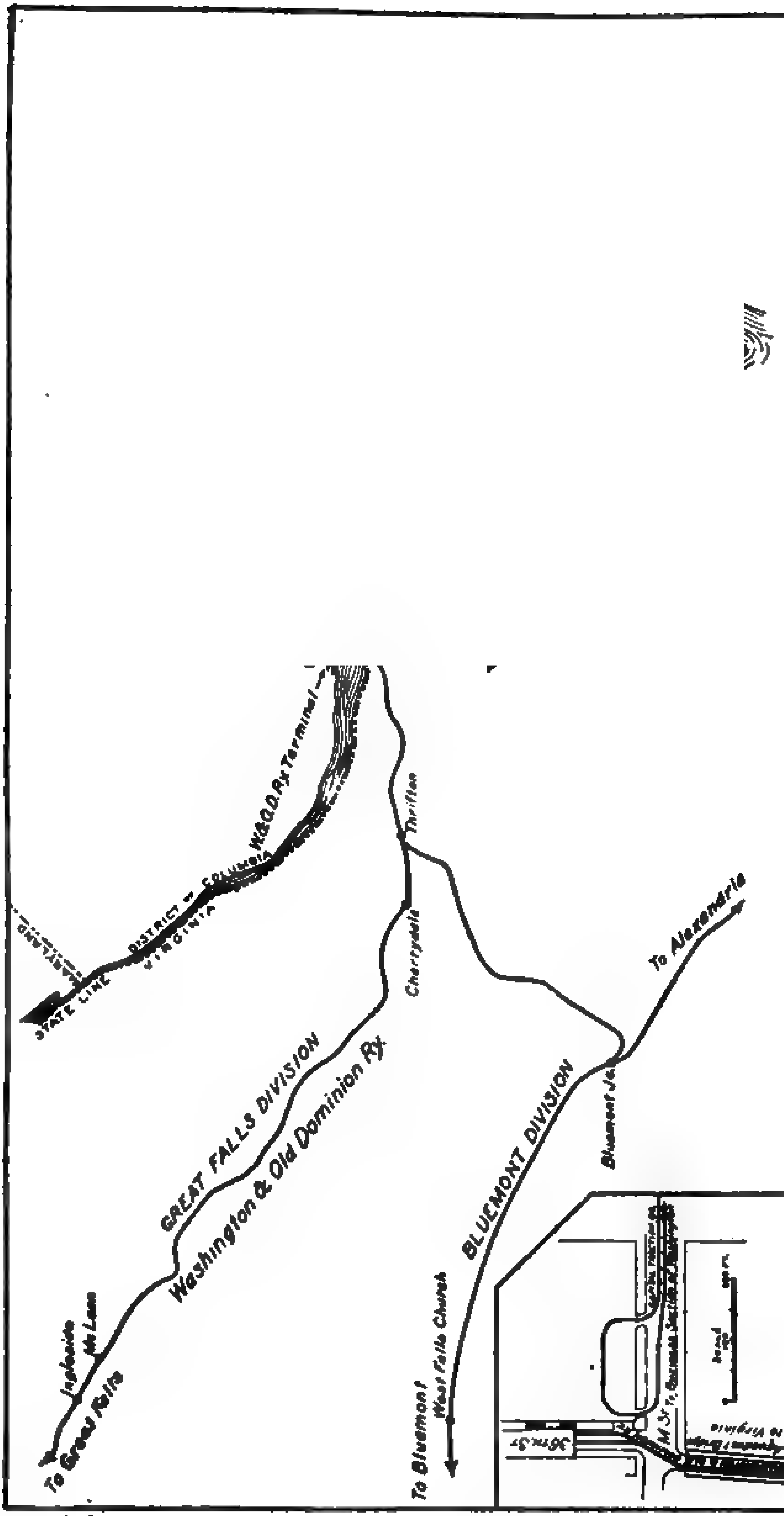
Wilton J. Lambert for Washington & Old Dominion Railway.

REPORT OF THE COMMISSION.

HALL, *Chairman:*

Complainants are residents of various communities in Virginia served by the Washington & Old Dominion Railway, hereinafter referred to as the Washington & Old Dominion, and use that railway and the railway of the Capital Traction Company in going to and from their respective places of business in Washington, D. C. By complaint, filed August 12, 1916, they allege that the withdrawal of the transfer arrangement theretofore existing between the defendants the Washington & Old Dominion and the Capital Traction Company subjects them to the payment of fares which are unjust and unreasonable and unjustly discriminatory in violation of sections 1 and 2 of the act. By an amended complaint, filed August 18, 1916, reparation is asked. The general situation of the defendant lines with respect to the city of Washington is shown by the accompanying map. It will be noted that there is no connection between the lines of the Capital Traction Company and the Washington & Old Dominion, but the terminal of the latter, Thirty-sixth and M streets, in Washington is only a few feet from the line of the former.

Prior to August 9, 1916, the fares paid by complainants were combination fares based either on Cherrydale, Va., or Thrifton, Va. Passengers living on the Great Falls division of the Washington & Old Dominion purchased tickets to and from Cherrydale, while those living on the Bluemont division purchased tickets to and from



To Great Falls
Ingleside
McLean
GREAT FALLS DIVISION
Washington & Old Dominion Ry.
Cherrydale
Thrifton
W.&O.D.Ry. Terminal
DISTRICT OF COLUMBIA
VIRGINIA
STATE LINE
MARYLAND
To Bluemont
West Falls Church
BLUEMONT DIVISION
Bluemont Jc.
To Alexandria
36th St.
M St.
to Virginia

Thrifton. The tariff carrying the fares between Washington and Thrifton contained the following provision:

Capital Traction Company transfers will be honored, within their time limit, for passage between Thirty-sixth and M streets, Washington, D. C., and all stations to and including Thrifton, Va.

Conductors will issue, on application, time-limited transfers to Capital Traction Company's lines, to passengers holding tickets to Washington, D. C., or paying fare to Washington, D. C.

A similar provision was contained in the tariff carrying the fares between Washington and Cherrydale. The cancellation of these provisions, effective August 9, 1916, led to the institution of the present proceeding.

Effective August 9, 1916, through commutation fares to Washington, Thirty-sixth and M streets, were published by the Washington & Old Dominion from points on both its Bluemont and Great Falls divisions. These fares are shown below with the combination fares formerly in effect. In the case of the latter fares between Cherrydale or Thrifton and Washington are figured on the basis of six tickets for 25 cents:

Between Washington, D. C., and—	Tickets, monthly commutation, 52 trips.[1]	Tickets, monthly commutation, 52 trips.[2]
BLUEMONT DIVISION.		
Hayes, Va.	$3.72	$2.60
Douglas, Va.	3.72	2.60
Lacey, Va.	3.97	2.85
Garrison, Va.	4.27	3.15
Bon Air, Va.	4.27	3.15
Bluemont Junction, Va.	5.27	4.15
Torrison, Va.	5.27	4.15
Fostoria, Va.	5.82	4.70
Falls Church, Va.	6.17	5.05
Rothsay, Va.	6.67	5.55
West Falls Church, Va.	6.67	5.55
Green, Va.	7.17	6.05
Dunn Loring, Va.	7.27	6.15
Wedderburn, Va.	7.32	6.20
Vienna, Va.	7.42	6.30
Clarks Crossing, Va.	8.42	7.30
Hunter, Va.	9.07	7.95
Pinecrest, Va.	....	8.35
Wiehle, Va.	9.87	8.75
Coral, Va.	10.37	9.25
Herndon, Va.	10.47	9.35
Herndon Heights, Va.	10.57	9.45
Oak Grove, Va.	10.77	9.65
Lynn, Va.	11.02	9.90
Sterling, Va.	11.37	10.25
Smiths, Va.	11.67	10.55
Ashburn, Va.	12.42	11.30
Belmont Park, Va.	13.12	12.00
Compher, Va.	13.42	12.30
Lawson, Va.	13.82	12.70
Leesburg, Va.	14.07	12.95
Clarkes Gap, Va.	15.07	13.95
Paeonian Springs, Va.	15.32	14.20
Hamilton, Va.	15.72	14.60
Ivandale, Va.	16.07	14.95
Purcellville, Va.	16.72	15.60
Round Hill, Va.	17.82	16.70
BLUEMONT DIVISION—con.		
Scotland Heights, Va.	$17.87	$16.75
Bluemont, Va.	18.52	17.40
Glencarlyn, Va.	5.67	4.55
Barcroft, Va.	6.32	5.20
Cowdon, Va.	6.32	5.20
GREAT FALLS DIVISION.		
Harrison, Va.	3.72	2.60
Greenwood, Va.	3.72	2.60
Maplewood, Va.	3.72	2.60
Livingstone Heights, Va.	3.87	2.75
Lyonhurst, Va.	4.97	2.85
Summit, Va.	4.97	2.85
Rixey, Va.	4.97	2.85
Jewell, Va.	4.97	2.85
Vanderwerken, Va.	4.97	2.85
Franklin Park, Va.	4.07	2.95
Rockwell, Va.	4.12	3.00
Chesterbrook, Va.	4.17	3.05
El Nido, Va.	4.92	3.80
Selva, Va.	5.17	4.05
Viresco, Va.	5.29	4.15
McLean, Va.	5.67	4.55
Ingleside, Va.	6.82	4.70
Balls Hill, Va.	6.12	5.00
Hitaffer, Va.	7.02	5.80
Jackson, Va.	7.02	5.90
Spring Hill, Va.	7.17	6.05
Prospect Hill, Va.	7.27	6.15
Belleview, Va.	7.32	6.20
Glendale, Va.	7.32	6.20
Peacock, Va.	7.32	6.20
Fairview, Va.	7.32	6.20
Elkins, Va.	7.37	6.25
Dickeys Road, Va.	7.42	6.30
Great Falls, Va.	7.52	6.40

[1] Fares effective prior to Aug. 9, 1916. [2] Fares effective on Aug. 9, 1916.

It will be noted that the through fares to the Washington & Old Dominion's terminal in Washington are considerably lower than the combination fares formerly applicable. While the combination fares were in effect passengers were entitled to transfers over the Capital Traction Company's line which carried them on into the city. The transfer arrangement, as already stated, was discontinued when the through fares were established. This change resulted in an increase in the total charges paid by commuters whose business brings them into the city. From Paeonian Springs and Franklin Park, representative points on the Bluemont and Great Falls divisions, respectively, of the Washington & Old Dominion, this increase amounts to $1.05 for 52 monthly commutation trips.

Complainants seek in this proceeding either the restoration of the transfer arrangement formerly in effect between the Washington & Old Dominion and the Capital Traction Company, or a determination that the new rates published by the Washington & Old Dominion are unreasonable.

Under the present state of the pleadings the sole issue before us is the jurisdiction of this Commission to grant the relief sought. Both defendants deny that the Capital Traction Company is subject to the jurisdiction of this Commission, asserting that it is simply a street railway company.

The Capital Traction Company does a street to street business in the city of Washington, and has a line running out to Chevy Chase Lake, in the state of Maryland. There appears to be nothing in the business done by this carrier, which is limited to the transportation of passengers, to distinguish it from the business conducted by other street railways in the various cities of the country. We are of opinion that jurisdiction over this company has not been conferred upon the Commission. *Omaha Street Ry.* v. *Int. Com. Comm.*, 230 U. S., 324. It follows that we have no power to require the restoration of the transfer arrangement previously existing between this railway and the Washington & Old Dominion.

Our jurisdiction over the new rates made effective August 9, 1916, by the Washington & Old Dominion is not questioned, and we consider that transportation over this line is subject to our jurisdiction. No evidence that the fares for transportation over its line are unreasonable has been offered. Unless a further hearing for this purpose is requested by complainants within 15 days from the service of this report the complaint will be dismissed.

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No. 5584.

CAMPBELL'S CREEK RAILROAD COMPANY

v.

ANN ARBOR RAILROAD COMPANY ET AL.

Submitted April 8, 1916. Decided April 24, 1917.

The Campbell's Creek Railroad Company is entitled to receive a division on coal delivered to the Kanawha & Michigan Railway, figured upon the basis of a mileage prorate of 28 miles, 200 per cent of the actual mileage of its line.

Francis B. James and *E. E. Williamson* for complainant.

Leroy Allebach and *W. N. King* for Kanawha & Michigan Railway Company.

SUPPLEMENTAL REPORT OF THE COMMISSION.

MEYER, *Commissioner:*

The complainant herein, on November 10, 1915, petitioned the Commission to prescribe the divisions to which it is entitled of joint through rates on coal maintained with the Kanawha & Michigan Railway, hereinafter called the defendant, and its connections; and also the divisions to which it has been entitled since the installation of joint rates effective July 1, 1915.

In *Campbell's Creek Coal Co.* v. *A. A. R. R. Co.*, 29 I. C. C., 682, we found that the maintenance by the defendant of main-line rates from points on the Kanawha & West Virginia and Coal & Coke railroads, and denying them from points on the Campbell's Creek Railroad, was unduly prejudicial to complainants. Following the order of the Commission requiring the removal of the undue prejudice found to exist, the defendant indicated its intention to cancel the main-line rates from points on the Coal & Coke and the Kanawha & West Virginia railroads. Before such tariffs were filed, however, these roads, and the operators located thereon, protested and induced the defendant to petition for a reopening of the case. This petition was granted, and upon rehearing the Commission entered a further report therein, *Campbell's Creek Coal Co.* v. *A. A. R. R. Co.*, 33 I. C. C., 558, and required the defendant and its connections to establish through routes and joint rates not in excess of the district rates with the Campbell's Creek Railroad. Such rates have been in effect since July 1, 1915. Being unable to agree with respect to divisions, the parties to this proceeding have appealed to us to establish the same.

The Campbell's Creek Railroad is a line some 13 or 14 miles long running from Putney, W. Va., to Dana, W. Va., the latter a point 5 miles south of Charleston, W. Va., on the main line of defendant. Coal furnishes at least 98 per cent of complainant's traffic. Not all of the coal transported by the complainant is delivered to the defendant. The Campbell's Creek Coal Company owns and maintains a tipple on the Kanawha River near Dana, and a considerable amount of the coal is delivered at this tipple for movement by barge. The balance is delivered to the defendant at Dana for shipment to Toledo and points in Ohio, Indiana, and Illinois. In handling coal from the Kanawha district, defendant delivers the traffic to the Toledo & Ohio Central Railway at Corning, Ohio, or the Hocking Valley Railway at Armitage, Ohio, which lines will hereinafter be called the Toledo lines. Corning is 131 miles and Armitage 110 miles from Dana.

The service performed by complainant in connection with coal delivered by its line to defendant consists of picking up empty cars from the interchange track of defendant at Dana, hauling these cars to Putney and placing them at the tipples of the mine and of hauling the loaded cars to Dana and placing them on the interchange tracks of defendant at that point.

Practically all the coal transported by complainant originates at mines 1 and 3 of the Campbell's Creek Coal Company at Putney. There has been some coal mined at the plant of the New Export Coal Company, located at Perryville, a point 7 miles from Dana, but operations at that mine have ceased.

The movement of coal via the line of complainant during the calendar years 1911 to 1915, inclusive, is set forth below:

	1911	1912	1913	1914	1915	Total.
	Tons.	*Tons.*	*Tons.*	*Tons.*	*Tons.*	*Tons.*
Via K. & M.	78,617	135,465	117,490	102,677	124,928	559,177
Via river	252,581	238,121	266,112	226,868	255,545	1,239,227
Local	3,073	3,870	3,161	3,203	5,106	18,413
Total	334,271	377,456	386,763	332,748	385,579	1,816,817

Of the coal moving via the line of defendant the tonnages of lake cargo and commercial coal for the same years are set forth below:

	1911	1912	1913	1914	1915	Total.
	Tons.	*Tons.*	*Tons.*	*Tons.*	*Tons.*	*Tons.*
Lake	22,117.50	40,246.32	45,664.42	30,754.05	56,268.75	195,051.04
Commercial	55,899.50	95,218.68	71,826.58	71,922.95	68,659.25	363,525.96
Total	78,017.00	135,465.00	117,490.00	102,677.00	124,928.00	559,577.00

It will be noted that approximately 35 per cent of complainant's tonnage has been lake cargo coal to which it is contended by defendant an unreasonably low rate applies.

Prior to the filing of the petition herein the complainant demanded 16 cents per ton while defendant offered 8 cents per ton when cars were furnished by it and 10 cents per ton when cars were furnished by complainant. At the hearing complainant asked for a division of 17½ cents.

The complainant introduced extensive exhibits to show the cost of construction of the Campbell's Creek Railroad, the cost of the operation, and the amount of the investment. Complainant contends for a division sufficient to pay operating expenses, a reasonable return upon its investment, and a fair profit. Figures introduced tend to show that for the fiscal year 1914 the cost to complainant of performing the service was 18.5 cents per ton; for 1915, 19.8 cents per ton, with an average for the four years 1912 to 1915, inclusive, of 18.7 cents per ton.

As indicating that 17½ cents would be a reasonable division, complainant states that it files tariffs with the Commission which name a proportional rate of 17½ cents per ton on coal from stations on its line to Dana when for shipment beyond via river and a local rate of 40 cents per ton on coal from Putney to Dana.

Defendant alleges that while the rates from the Kanawha district were voluntarily established they were made to meet competition. Before the mines in the Kanawha district were opened the mines in the Pittsburgh district were shipping coal to the destinations involved in this proceeding. In order to place operators on its line on a competitive basis with the Pittsburgh operators, defendant published the Pittsburgh rates from the Kanawha district, although the hauls from that district are much longer, and insists that the complainant should be willing to bear its proper share of the burden of maintaining such extremely low rates.

Defendant states that the lines north and west of Toledo and the cross lines south of Toledo as a rule demand a specified minimum as their division which is generally the same amount as that received on coal from the Pittsburgh fields, and that as a result defendant and the Toledo lines receive abnormally low divisions. The balance of the rate, after deducting the division accorded lines north and west of Toledo or cross lines, is divided between defendant and the Toledo lines upon a mileage basis. In making this division, defendant is allowed in addition to its actual mileage to its junction point with the Toledo lines a constructive mileage of 30 miles for its bridge across the Ohio River. The bridge is three-fourths of a mile long. Defendant insists that whatever division is accorded complainant be

allowed out of the amount accruing for the haul to Toledo or to the junction points of the Toledo lines with the cross lines south thereof.

Complainant contends that it should not be made to suffer because the lines beyond Toledo and the cross lines south thereof demand excessive divisions and argues that it is entitled to a fair division even though it may necessitate a change in the amount which carriers beyond Toledo receive.

The division allowed the Kanawha & West Virginia Railway is figured upon an arbitrary mileage of 60 miles, whereas its length of line is 34 miles, resulting in a division to that road on a basis of 170 per cent of its actual mileage. Divisions with the Coal & Coke are arrived at by dividing the road into blocks and allowing arbitrary mileages of from 60 to 75 miles, whereas the longest actual haul over this road is 51 miles. This results in an allowance of from 120 to 150 per cent of its actual mileage.

Defendant is willing to accord complainant divisions based upon double the actual mileage.

Defendant emphasizes the close relationship between complainant and the Campbell's Creek Coal Company, and refers to *Chicago, West Pullman & Southern R. R. Case*, 37 I. C. C., 408, where we said, at page 409:

> Although these two concerns are separate and distinct corporations, the majority of the stock of each is held by the same stockholders. We have, therefore, a situation where at least one, if not two, of the industries served by this carrier are in the position of proprietary industries. The amount of switching allowances accorded the West Pullman must therefore be determined not only from the standpoint of what is fair among common carriers, but also from the standpoint of equality and justice among shippers.

Upon consideration of all the facts of record we are of the opinion that divisions upon basis of a constructive mileage of 28 miles are reasonable.

Some of the coal originating on complainant's line is carried to destination entirely over roads which are parts of the New York Central lines. That system therefore can control the division of the rates to such points among its subsidiary companies. In those instances it is expected that the divisions will be computed on a basis of 28 miles for complainant and the actual distance from Dana to destination for the New York Central lines, including defendant, with an allowance of 30 miles for the bridge across the Ohio.

A different situation exists, however, with respect to shipments destined to points on foreign lines. No good reason for changing the divisions accorded cross lines and lines beyond Toledo has been shown; neither has it been shown that the amounts accorded are excessive. The amount of division to be paid complainant on ship-

ments to points on foreign lines shall therefore be computed by prorating the divisions received by defendant and the Toledo lines for the haul up to junction points with the cross lines or with lines beyond Toledo on the basis of 28 miles for complainant and the actual mileage from Dana to the junction point with an allowance of 30 miles for the Ohio River bridge. An appropriate order will be entered.

No divisions have been received by complainant since the joint rates were established. The complainant is entitled to divisions since that date figured upon the bases outlined above. It is expected that defendant will promptly pay to complainant the amount found due on shipments which have moved since July 1, 1915.

No. 8617.

SILK ASSOCIATION OF AMERICA

v.

PENNSYLVANIA RAILROAD COMPANY ET AL.

Submitted October 26, 1916. Decided May 5, 1917.

Ratings in the official classification on less-than-carload shipments of raw silk, thrown or spun, whether or not on wooden spools, bobbins, or warp beams, when of a value in excess of $1 per pound, of one and a half times first class; and of first class on such raw silk of a value not in excess of $1 per pound, and on silk waste, found to be neither unreasonable nor unjustly discriminatory. Complaint dismissed.

Austin, McLanahan & Merritt and *John B. Daish* for complainant.
Stewart C. Pratt, *Jackson E. Reynolds*, *Douglas Swift*, and *John L. Seager* for defendants.

REPORT OF THE COMMISSION.

MEYER, *Commissioner:*

Raw silk may consist of the silk thread as imported; the thrown silk, which is several threads combined by what is known as the process of throwing; or spun silk, sufficiently described by its name. There is a small amount of artificial raw silk, which is not differentiated from other raw silk. Silk waste consists of fiber from the cocoon from which silk is taken which can not be reeled, fiber left in the process of manufacturing spun silk and which is called noils,

or cocoon remnants and punctured or pierced cocoons. Complainant, a corporation organized not for profit but for the protection of the interests of its 300 members, asks in this proceeding that, regardless of value, the rating in the official classification of raw silk on wooden spools, bobbins, or warp beams, and waste silk in bags, bales, or boxes, less than carload, be made second class; and of other raw silk first class. The present ratings assailed as unjust and unreasonable and unjustly discriminatory and prejudicial are first class on silk waste and on raw silk of a value not in excess of $1 per pound and one and a half times first class on raw silk in excess of that value. As all raw silk, except a negligible quantity called Tussah silk, is worth more than $1 per pound, the practical effect of the present classification is a rating of one and a half times first class on raw silk throughout official classification territory. Prior to 1903 raw silk was not rated in official classification but was accepted for transportation by special agreement only. In that year raw silk and waste silk were accorded a rating of first class when released to a value of $1 per pound; and three times first class when not so released. Upon the passage of the first Cummins amendment the present tariff rating on raw silk was filed to become effective June 2, 1915. The rating on silk waste has not been changed since 1903.

Under the tariffs prior to June 2, 1915, shippers of raw silk could pay the first-class rate at the released value and obtain insurance for the full value at a cost not in excess of 10 per cent of that rate. The present rating results in an increased rate, the burden of proof to justify which is on the carriers. No increase has been made in the ratings on silk waste since January 1, 1910.

The average value of raw silk is $3.84 per pound. The value per shipping pound of the different kinds of raw silk and silk waste is as follows:

Commodity.	Raw silk.	Thrown silk.	Spun silk.	Waste.		Noils.	Thrown silk on spools.	Spun silk on spools.
				Asiatic.	European.			
Density or weight per cubic foot, pounds	22	15	28	30	9	8	20	20
Value per gross shipping pound	$3.20	$3.75	$2.30	$0.65	$0.60	$0.28	$2.00	$1.25

The "shipping pound" includes the weight of the package in which the silk is shipped; and, when used, the spool, bobbin, warp beam, or cone on which it is wound.

Raw silk is transported from importer to throwster, thence to the dyer, and back to the importer, so that the carriers obtain three, sometimes more, hauls of the same commodity. However, much of this

transportation is by express, on which shipments the carriers receive from the express companies more than when shipments are made by freight. Shipments are made in well packed bales weighing from 108 to 240 pounds, the average shipment of the raw article being from 10 to 15 bales, and of thrown silk 1 to 2 bales.

The concentration of value in shipments of raw silk and silk waste makes such shipments hazardous to the carrier. This is illustrated by an exhibit of record showing one shipment of 20 bales of a value of $11,136, 22 shipments consisting of 139 bales valued at $77,510.40, and 24 shipments of 147 bales valued at $84,940.80. One wreck cost a carrier in payments for loss of these commodities $10,680.70, as much as its revenues from the traffic thereon for two years. The loss and damage claims paid, taking all the shipments on which the record shows such payments, are, however, not in excess of 1 per cent of the revenue paid thereon and are less than the percentage of loss and damage payments to revenue received from all commodities. Insurance against all loss could be obtained at a cost amounting to from 5 to 10 per cent of the first-class rate, but the insurer reserves the right of subrogation against the carrier in case of loss.

The increase of 50 per cent in the rating on raw silk can not be justified and is not sought to be justified solely because of the increased hazard resulting from the full liability required by the first Cummins amendment. The increase in the hazard is not the only fact to be considered in prescribing rates for the transportation of highly valued commodities. The Supreme Court in *N. P. Ry.* v. *North Dakota*, 236 U. S., 585, 599, in giving some of the many factors which should be considered in making rates, names "the risk assumed" and also "the value of the service." This Commission has throughout its history given consideration to the value of a commodity when determining what is a reasonable rate thereon.

Illustrative of the value of service is the percentage that the rate paid bears to the value of the article. This percentage on raw silk is less than 0.15 of 1 per cent, while such percentages on other articles of necessity and daily use are much higher. Below is a table introduced in evidence by the chairman of the official classification showing such percentages:

	Per cent.		Per cent.
Butter	0.9	Beans	4.8
Clover seed	1.2	Potatoes	14.8
Cotton	1.6	Sweet potatoes	5.0
Eggs	1.3	Oats	6.0
Apples	13.6	Barley and rye	7.3
Corn	9.2	Hay	15.8
Average for all grains	7.7	Cattle and hogs	2.5
Live poultry	4.5	Wood	0.6

Silk is one of the commodities of the highest value in proportion to the ratio which the charges bear to the value of the commodity.

Because of the "less value per shipping pound" of the commodity when shipped on spools, bobbins, etc., complainant contends that there should be lower rates on such shipments. This contention is based on the one element of ratio of value to density and disregards the value of the service. Such an extreme differentiation is not practicable, especially on a commodity like spun or thrown silk when shipped in less-than-carload quantities. Some such silk is wound on cones or paper coils, as to which no relief is asked. To make the rates on silk wound on spools and bobbins different from the rates on silk wound on cones and paper coils would lead to an impracticable multiplication of rates. While in the general description of dry goods, classified first class in less-than-carload shipments, there are included some commodities like velvet of a value somewhat similar to that of silk, no unjust discrimination or undue preference results. The dry goods list must be considered as a whole and this record presents no justification for including raw silk in that classification.

From all the facts of record we find and conclude that the rates assailed are neither unreasonable nor unjustly discriminatory, and the complaint will be dismissed.

No. 8444.

R. S. HILL, DOING BUSINESS UNDER THE STYLE OF HILL PRODUCE COMPANY,

v.

NASHVILLE, CHATTANOOGA & ST. LOUIS RAILWAY ET AL.

FOURTH SECTION APPLICATION No. 3912.

Submitted April 7, 1916. Decided May 1, 1917.

1. Rates on eggs, live poultry and dressed poultry from Lebanon and Watertown, Tenn., to Baltimore, Philadelphia, New York, and other eastern points found neither unreasonable nor unduly preferential.
2. Rates on eggs, live poultry and dressed poultry from Lebanon and Watertown to points in the southeast for local consumption and for export to Havana, Cuba, found neither unreasonable nor unduly preferential.
3. Rates on eggs, live poultry and dressed poultry from points on and north of the Ohio River, including St. Louis and Chicago, to points in the southeast for local consumption and for export to Havana found neither unreasonable nor unduly preferential.
4. Publication of separate charges for icing in the territory involved south of the Ohio River held not unreasonable.
5. Present method of publishing icing and re-icing charges on eggs and dressed poultry to territory south of the Ohio River found unreasonable; carriers required to reshape their tariffs publishing a flat maximum charge to cover the total service.
6. Allegation of exaction by the carrier of charges not warranted by tariff not sustained by proof.
7. Authority granted under the fourth section to the Tennessee Central Railroad Company and connections to continue rates on eggs and poultry from Nashville to eastern destinations lower than the rates contemporaneously applicable on like traffic from Lebanon, Watertown, and other intermediate points to the same destinations.

Perkins Baxter and *O. P. Anderson* for complainant.

R. Walton Moore and *Edward W. Hart* for Nashville, Chattanooga & St. Louis Railway; Tennessee Central Railroad Company, and others.

William Burger for Louisville & Nashville Railroad Company.

William W. Collin, jr., for Pennsylvania lines.

O. S. Lewis for Baltimore & Ohio Southwestern Railroad Company.

C. P. Stewart for Cleveland, Cincinnati, Chicago & St. Louis Railway Company.

REPORT OF THE COMMISSION.

DANIELS, *Commissioner:*

The complainant is engaged in buying eggs and dressed and live poultry at Watertown, Lebanon, and Nashville, Tenn., and shipping principally to eastern points, such as New York, Philadelphia, and New England cities. He also purchases at Chicago and St. Louis and ships to the southeast and to Cuba. The complaint in this case is exceedingly comprehensive. The evidence offered in support of many of the numerous averments is meager, and consisted for the most part of categorical answers by the complainant to questions framed from these averments. Consequently, this report primarily will deal only with those phases of the complaint which are adequately covered by the evidence of record.

Formally attacked as unreasonable are:

(1) The carload and less-than-carload rates on eggs and dressed poultry, and the carload rates on live poultry from Nashville, Lebanon, and Watertown, Tenn., to Boston, Providence, New York, and Philadelphia, which points with others in this region will be referred to as eastern destinations.

(2) The rates on eggs from Chicago, St. Louis, Louisville, Nashville, Lebanon, and Watertown to points in the southeast, such as Charleston, Savannah, Jacksonville, Tampa, New Orleans, and Havana, Cuba, the latter including—

(3) Rates for car-ferry service from Florida ports to Havana and for terminal switching at destination.

(4) The charges and practices as to refrigeration of eggs and dressed poultry from Nashville, Lebanon, and Watertown to eastern destinations.

(5) The charges and practices as to refrigeration of eggs from Chicago, St. Louis, and other points north of the Ohio River to southeastern and southern points, and to Havana.

The complaint also alleges:

(6) Undue preference of Chicago and St. Louis as against Nashville, Lebanon, and Watertown.

(7) That certain charges were collected not authorized by the tariffs.

(8) That the present method of publishing refrigeration charges is unreasonable, a request being made for a flat refrigeration rate to cover the total service from point of origin to destination.

(9) Certain departures from the fourth section in the rates of the Tennessee Central.

Fourth Section Application No. 3912, covering the above-mentioned departures, was heard with the complaint.

The issues may be roughly classified into those dealing with (1) shipments from Lebanon, Watertown, and Nashville to eastern destinations; (2) shipments from Lebanon, Watertown, and Nashville to the southeast and to Havana, Cuba; and (3) shipments from points on and north of the Ohio River, including St. Louis and Chicago, to the southeast and Havana, Cuba.

About 90 per cent of the complainant's business is in eggs, and 95 per cent of these eggs move from Nashville, Lebanon, and Watertown to eastern destinations. Nearly all of his shipments to the south are cold storage eggs, purchased at Chicago or St. Louis and shipped to Havana.

From Lebanon and Watertown to the southeast the southern classification governs the ratings of eggs, while from Nashville to eastern destinations, and from points on and north of the Ohio River to the southeast and to Havana, official classification governs. In both southern and official classifications eggs are rated second class, and the rates here involved are either second-class rates or commodity rates which in amount conform to second class. Second class in official classification is an any-quantity rating, and when a minimum is referred to in this report it signifies the minimum weight of the commodity from one consignee to one consignor for which a car will be furnished for exclusive individual use. Under official classification eggs move in carload quantities; but no specific carload rating is accorded. While the complainant offered no evidence tending to show that the classification rating on eggs is improper or that the commodity rates lower than class rates should be established, or that the 15,000-pound minimum can not be loaded, the defendants' evidence in support of the existing rating, rates, minimum, and practices is fairly comprehensive.

REFRIGERATION FROM NASHVILLE, LEBANON, AND WATERTOWN TO THE EAST.

On shipments of these commodities from Nashville, Lebanon, and Watertown to eastern destinations, the initial icing for many years has been paid for by the shipper as a separate charge. Prior to August 1, 1915, all re-icing charges were included in the rate. Since that time, however, in addition to the initial icing, re-icing charges also have been separately assessed upon the shipper. According to the complainant, the charge for this re-icing en route varies in amount from $10 to $24 per car. The carriers at Chicago and St. Louis include the initial icing in the rate. This is the discrimination alleged to be unlawful and unduly prejudicial to shippers at Nashville, Lebanon, and Watertown, Tenn., on shipments to eastern destinations.

Eggs from Nashville, Lebanon, and Watertown to eastern destinations may move either over the Tennessee Central to Harriman, Tenn., thence over the Southern Railway and its connections; or over the Tennessee Central to Emory Gap, Tenn., thence over the Cincinnati, New Orleans & Texas Pacific Railway through Cincinnati; or over the Nashville, Chattanooga & St. Louis Railway to Chattanooga. and thence over the Southern and its connections; or over the Louisville & Nashville by way of the Ohio River routes. Before March 20, 1915, the lines in central freight association territory and eastern trunk line territory made no icing charges in addition to the rate on eggs and poultry on shipments of 15,000 pounds or more. One of the defendants' witnesses, speaking for the Southern Railway, testified that the first inclusion of an icing service of any kind in the rate on dairy products, as far as its records showed, began in 1896, when it developed that certain lines from the Ohio River were including an icing service in the rate. Since those lines, operating as a part of the route through the Ohio River, did not publish a separate charge for re-icing, lines operating over the routes cited through the Virginia gateways and Potomac Yard, to compete with these lines from the Ohio River points, likewise published no separate charge for re-icing. On March 20, 1915, the central freight association lines and the trunk lines began to publish separately a charge for re-icing based on $2.50 a ton for ice on car-lot traffic in these commodities. Thereupon, the Nashville, Chattanooga & St. Louis, the Tennessee Central, and the Southern, also published a re-icing charge upon the same basis. The carriers contend that this $2.50 a ton charge does not cover the cost of the ice.

The addition of these re-icing charges to the rate for carriage, in so far as central freight association lines and the trunk lines are concerned, was dealt with in *National Poultry, Butter & Egg Asso.* v. *B. & O. S. W. R. R.*, 43 I. C. C., 392, where it was held that on eggs and other perishable products rated third class or higher in official classification, the carriers involved had not justified the separate stated charge for refrigeration in addition to the rate. Since the defendants herein insist that they were compelled to include the re-icing charges in the rate, when the movement was to eastern destinations, because of the central freight association and trunk lines' practice, the holding in the above case,—that the lines there defendant are not justified in imposing the separately stated charge for the refrigeration service,—would imply that the lines here involved, if they are to continue to compete for the traffic, will discontinue the separately stated charge for refrigeration and will hereafter include the re-icing charge in the rate for carriage.

REFRIGERATION TO THE SOUTH.

On eggs from Chicago, St. Louis, and points on and north of the Ohio River to south Atlantic ports and points in the south and southeast, the icing charge is included in the rate by the Nashville, Chattanooga & St. Louis and Southern, but not by the Louisville & Nashville for that part of the transportation south of the Ohio and east of the Mississippi. The defendants contend that where the refrigeration charges are included in the rate it is done because of competition, the practice having been begun by some lines competing for this business. However, the practice of including icing charges under the rate for carriage is not general in the territory south of the Ohio River, and may be said to be the exception rather than the rule.

REFRIGERATION TO HAVANA.

On traffic from Nashville, Lebanon, and Watertown neither the initial nor the re-icing charges are included in the through rate for carriage. Competition, which compelled the inclusion of icing charges when the traffic originated at and north of the Ohio River, does not exist on traffic to the southeast from these points. The Louisville & Nashville never included either initial or re-icing charges in the rates in any direction except to the eastern cities; and for a period previous to January 15, 1914, in the rates to Havana. The principal re-icing stations on the Louisville & Nashville for shipment to the south are Nashville, where the cost of the ice to the Louisville & Nashville is given as $3 a ton, and at Montgomery, Ala., where the cost is given as $3.50 a ton. At points on lines of other carriers the cost per ton occasionally rises higher than these figures. The complainant testified that $4 a ton is common for re-icing. These are the charges that the defendants make to the shipper for icing.

The complainant makes the following showing of the ordinary charges for refrigeration (icing and re-icing) of a carload of eggs from Chicago to Havana:

Initial icing, 5 tons	$15.00
Re-icing at Nashville, 2 tons	7.00
Re-icing at Macon, 2 tons	8.00
Re-icing at Miami, 3 tons	7.50
Total	37.50

If the time consumed in transit is more than the shortest scheduled time, charges in addition to these listed above not infrequently accrue from Chicago and St. Louis to Havana of from $8 to $16, and from Nashville, Lebanon, and Watertown to Havana of $8 per car.

The complainant contends that the rates on the commodities here involved must be held to have taken refrigeration into account. The

defendants deny that refrigeration was considered when the rates were originally constructed.

The complainant's contention that the charge for refrigeration which is to be made in addition to the rate for carriage should be published in the tariff as a maximum sum per 100 pounds or per car is not adequately answered by the carriers. The complainant showed a wide variation in the re-icing charges to these destinations where the tariffs provide that re-icing is to be paid for on the basis of the amount of ice used. The complainant gives the refrigeration charges per car between the following points when the trains move on schedule time:

Chicago to Atlanta	$37.50
St. Louis to Atlanta	37.50
Nashville to Atlanta	41.00
Lebanon to Atlanta	41.00

The defendants objected that it was not fair to take the shortest time in which the runs were made and assume that the refrigeration on such runs is the normal amount; they pointed out that frequently the missing of a connection entails necessary delay. Delay in prompt movement obviously increases the amount of ice necessary and consequently the charges. It is no sufficient reply to point to the fact that the tariffs provide that the shipper may specify the amount of ice actually to be used. Should there be delay from whatever cause it is apparent that he would desire ample refrigeration for his shipment and hence would hesitate in exercising this option to specify only an amount of ice which would be sufficient for the scheduled time of movement but not sufficient in case of delay. The facts as to the necessities of refrigeration en route lie peculiarly within the knowledge of the carriers as do the ordinary occasions of delay, and it is no hardship to require the carriers to establish and carry in their tariffs a maximum sum for the service of refrigeration beyond which the carrier must pay for excess refrigeration costs, if any. To permit the present method of billing for extra ice, sometimes, according to the testimony, in considerable sums and on bills rendered long after the shipment, tends, to say the least, to remove incentive to expedited service. On fruit and vegetables flat refrigeration charges are made, and the defendants' effort to distinguish this traffic from that in the products here involved is not sufficient to exempt them from publishing a reasonable maximum flat refrigeration charge.

Elaborate exhibits as to the cost of refrigeration on the Pennsylvania lines were introduced by the defendants. Though these dealt with the general territory not involved in this proceeding, they tend to show that the charges for icing and re-icing here concerned yield the carriers, at least in most instances, not more than the cost of

the service. The Pennsylvania pays $4 a ton for ice at Cincinnati and $3.25 a ton at Latonia, Ky., and charges the shipper $2.50.

RATES TO HAVANA.

Not long since a car-ferry service from Key West to Havana was established. Previously shipments of eggs had been unloaded by the carrier at Key West and reloaded without a charge in addition to the rate. Following the institution of the ferry service, besides the rate on eggs from Chicago, St. Louis, Nashville, Watertown, and Lebanon, a charge of 10 cents per 100 pounds is made when the ferry is used and 5 cents per 100 pounds for switching at Havana. The defendants deny the jurisdiction of this Commission over these rates and charges and explain that they show in their tariffs the rate for ocean carriage merely as a convenience for shippers, since they are permitted to do so by our tariff regulations.

In *Lykes Steamship Line* v. *Commercial Union*, 13 I. C. C., 310, we said that—

> The word "adjacent" as used in the act to modify the words "foreign countries" would seem to mean adjacent in the sense of the possibility of substantial continuity of rails.

It was there held that Cuba was not an adjacent foreign country, and it is settled that the Commission has not jurisdiction over traffic from a point in the United States to a point in Cuba.

The complainant alleges that certain charges were exacted by the defendants which were not warranted in the tariffs. He did not, however, furnish sufficient information to determine this point.

We are of opinion and find (1) that the present charges for icing and re-icing attacked in this proceeding are neither unreasonable nor unduly preferential; (2) that the rates attacked in this proceeding are not unreasonable or unduly preferential; (3) that the defendants should alter their practice in regard to the manner of constructing and stating icing and re-icing charges, and should publish from Watertown, Lebanon, and Nashville to the points of destination here involved other than eastern destinations a maximum sum for the entire icing service when at least 15,000 pounds are loaded in the car, fixed at either so much per 100 pounds of freight or so much per car. Our finding in this matter is not to be understood as disapproving the present rates or charges imposed for ice per ton actually furnished, but the requirement herein is that in addition to the icing and re-icing charges per ton the carriers shall be required to name in the tariffs a definite maximum sum per car or per 100 pounds which shall limit the aggregate charges exacted for icing or re-icing by the carriers during the carriage of the shipment to destination; and such maximum charges which are herein required shall not substantially exceed the charges which now ordi-

narily accrue when the regular freight schedule is made upon the movement of the traffic here involved. We can not determine from the data submitted upon this record the reasonable maximum charge per 100 pounds or per car for this service; (4) that the allegation of exaction by the carrier of charges not warranted by tariffs is not sustained by proof on this record.

FOURTH SECTION.

The rates from Lebanon and Watertown to eastern destinations are higher than from Nashville to the east. These departures from the fourth section provision occur on traffic tendered to the Tennessee Central as the originating line. On this line traffic moves from Nashville 32 miles through Lebanon and 45 miles through Watertown on its way east, and can be delivered by that carrier to the Cincinnati, New Orleans & Texas Pacific at Emory Gap, or to the Southern Railway at Harriman, for its further transportation to destination. The basis for the rates on eggs in carloads from Lebanon and Watertown to the east is the combination on Nashville, subject to a maximum rate of 15 cents per 100 pounds in carload quantities over the rate from Nashville. The basis for the rates on eggs in less than carloads from Lebanon and Watertown to the east is combination on Nashville, with no provision for the 15-cent maximum differential over the rate from Nashville.

The complainant's allegation of discrimination arising from the relationship between the carload and less-than-carload rates on eggs from Watertown to eastern destinations and the issues arising under the fourth section are somewhat related upon the facts of this record. The complaint is that the less-than-carload rate is 7 cents higher than the carload rate. This arises from the fact that this 15-cent maximum differential, just described, is observed on carload traffic but is not observed on less-than-carload traffic. In other words, the any-quantity rate from Watertown to Nashville is 22 cents, but observing the maximum differential of 15 cents over Nashville on carload traffic and not observing it on less-than-carload traffic brings about the 7-cent difference between the carload and less-than-carload rates. The situation as between the traffic from Lebanon and Watertown is different. The any-quantity rate from Lebanon to Nashville is 15 cents, and inasmuch as the maximum differential over Nashville on carload traffic is not therefore exceeded, a difference between the carload and less-than-carload rates from Lebanon is not in issue.

The Tennessee Central maintains that the maximum differential basis, above described, as to Watertown, came to it by succession from the Southern Railway and the Illinois Central Railroad, which operated the Tennessee Central during the three years prior to July 1,

1908, the date on which it passed under the succeeding management, and that the discrimination should be removed, if found to be undue in this proceeding, by canceling the maximum differential provision as to carload traffic from their tariffs and by making the carload rate, as well as the less-than-carload rate, on through traffic, by the addition to the rate from Nashville of the any-quantity rate of 22 cents from Watertown to Nashville. This is an undue prejudice against less-than-carload traffic from Watertown, which the carriers will be expected to remove.

It is testified on behalf of the Tennessee Central that while the Tennessee Central and connections constitute the short route from Nashville to certain eastern port cities, they do not form the short route from Nashville to interior eastern cities such as Albany, Syracuse, and Troy, and that if the carriers via these routes should be compelled to observe the requirements of the fourth section as to the port cities and not as to the interior points, the result would be an anomalous situation as between the port cities and the cities farther inland.

It is contended, however, that even as to the eastern port cities fourth section relief should be granted. It is stated on behalf of the Louisville & Nashville that the rates from Nashville to the east are depressed by reason of the competition, actual or potential, of the water route afforded by the Cumberland and Ohio rivers between Nashville and the Ohio River crossings, in connection with the low rates of the trunk lines thence to the east. It is testified that the Cumberland River boats formerly exchanged freight with boat lines operating between Nashville and Ohio River points, such as Cincinnati and Pittsburgh, and with boat lines operating between Nashville and New Orleans, and that these other boat lines with which this exchange was made exchanged freight with trunk lines operating between Cincinnati and Pittsburgh and the northern and eastern manufacturing centers, and with steamship lines operating between New Orleans and the northern Atlantic ports, or between New Orleans and foreign countries. It is testified that when the Louisville & Nashville built into Nashville from Louisville, in 1859, it found the competition of the water routes operating on the Cumberland River "between Nashville and the various markets and shipping points on or reached through the Ohio River so acute that its ascending mileage scale of rates was abandoned, and class rates approximating those of the boat lines was adopted for the haul between the Ohio River and Nashville."

Another influence that is said to have depressed the rates from Nashville to the east is the relationship of Nashville as a market to the markets of Memphis, St. Louis, and Chicago. Beginning with Chicago, it is contended that the rates between Chicago and the east

were fixed years ago with relation to the rates in effect over the lake and canal routes, resulting in the trunk line adjustment now in effect. As a part of that general adjustment the rates from St. Louis to the east were made on the basis of 117 per cent of the rates from Chicago to New York. It is pointed out that in making this adjustment from St. Louis it was taken into account that St. Louis had connections with the east by water lines operating on the Mississippi River to New Orleans and on the ocean beyond, and by rail, lake and rail routes leading from St. Louis to the north.

The rates from Memphis to the east are alleged to have been made on the basis of low differentials over the rates from St. Louis. Memphis, like St. Louis, is a Mississippi River crossing and competes with St. Louis as a market and as a gateway for transcontinental business. It is pointed out that, in fixing the basis from Memphis, the fact was taken into account that traffic could and did move from Memphis to the east via water lines operating on the Mississippi River to New Orleans in connection with ocean steamships beyond, or via water lines operating on the Mississippi and Ohio rivers to the upper Ohio River crossings in connection with rail lines thence to destination.

It is further testified that the bases of rates thus established from St. Louis and Memphis to the east, which were depressed by the force of the competitive routes described, affected in turn the basis applicable from Nashville to the east. It is testified that until about 1890 the rates from Nashville to the east were made on basis of Ohio River combination, but that thereafter it was found necessary to give important consideration, in connection with the adjustment from Nashville, to the location of Nashville compared with that of Memphis and St. Louis, and that finally the rates from Nashville came to be made differentials, beginning 9 cents on first class, under the rates from Memphis. It is explained that in finally arriving at this basis consideration was given to the facts that there were available water routes and water-and-rail routes from Nashville; that Nashville's natural location was favorable compared with that of Memphis, St. Louis, and Ohio River points, all of which are situated on navigable rivers; and that the rail haul from Nashville to the east is shorter than the rail haul from Memphis to the east.

Reference is made to some of our previous decisions in which we discussed the situation at Nashville with respect to the competition of the various routes from there, and attention is called to expenditures by Congress for improvement of navigation on the Cumberland River.

Our attention is also invited to a comparison of the rates from Nashville to New York with the rates from other important commer-

cial centers in the southeast to New York, which is herewith reproduced:

	Miles.	1	2	3	4	5	6	A	B	C	D	E	H	F
Nashville, Tenn.	952	93.2	82.9	64.4	47.1	39.9	33.8	....	....	....	....	....	....	....
Chattanooga, Tenn.	846	114	98	86	73	60	49	36	48	40	39	58	68	78
Knoxville, Tenn.	736	100	85	70	55	48	40	36	46	36	36	48	55	73
Atlanta, Ga.	876	126	108	95	81	66	54	41	53	45	44	64	76	88
Birmingham, Ala.	989	126	108	95	81	66	54	41	53	45	44	64	76	88
Montgomery, Ala.	1,051	126	108	95	81	66	54	41	53	45	44	64	76	88
Decatur, Ala.	968	116	100	88	75	62	51	38	59	42	41	60	79	80
Sheffield, Ala.	1,011	116	100	88	75	62	51	38	50	42	41	60	70	80

It is contended that these same conditions which have thus operated to depress the rates from Nashville have not obtained in connection with traffic from Lebanon and Watertown, and that the circumstances and conditions affecting the transportation from Nashville and from those points, respectively, are therefore substantially dissimilar.

It is testified on behalf of the Tennessee Central that although the Tennessee Central and connections form the short routes from Nashville to the eastern port cities as explained, the carriers over these routes did not originally establish the existing basis of rates from Nashville to the east, but that they only adopted the rates made by other lines, operating under better conditions than the Tennessee Central, when the Tennessee Central was opened for operation in 1902. It is stated on behalf of the Tennessee Central that the operating conditions on its line are adverse, and exhibits are filed depicting the grades encountered.

It is further shown that the engine capacity on the Tennessee Central is light compared with that of other roads having difficult operating conditions in the same general territory.

It is further represented that the Tennessee Central is a road of low density of tonnage, it having, with the exception of Nashville, only two points on its rails, Hopkinsville and Clarksville, with a population of more than 5,000, and only four other points, Lebanon, Cookeville, Monterey, and Harriman, with a population in excess of 1,000.

The financial condition of the Tennessee Central is also shown to be poor. At the time of the hearing it was in the hands of a receiver and has been operating at a deficit, which during the fiscal year ended June 30, 1915, was more than $633,000. It was testified that if the Tennessee Central observed literally the long-and-short-haul clause of the fourth section from all intermediate points on its line, on all commodities, the probable result of an adverse ruling with respect to the commodities and points now being considered, its very existence would be threatened.

Figures are presented to show that a literal compliance with the fourth section with respect to the commodities here involved, shipped

from all points on the Tennessee Central between Nashville and Harriman to all eastern and interior eastern destinations for the fiscal year ended June 30, 1915, would have reduced that carrier's revenues somewhat in excess of $500 per month; and that the reduction in revenues on lumber and forest products for the fiscal year ended June 30, 1914, would have been, based on the ascertained reduction of $2,180 for the two representative months August and March of that year, in excess of $13,000, a total of about $20,000 on these commodities alone; and this reduction would not be shared by the connections of the Tennessee Central in the through routes. For the fiscal year ended June 30, 1915, the ratio of operating expenses to operating revenues on the Tennessee Central was 85 per cent.

It is further represented by the Tennessee Central that while the rates from Lebanon and Watertown to the east are not directly affected, as already stated, by the competitive conditions which operate to depress the level of the rates from Nashville to the east, the rates from those points are indirectly affected by those influences, because they are depressed by reason of the low basis applying from Nashville. This relationship between the rates from Nashville, Lebanon, and Watertown to representative eastern points, on the commodities here in question, is reflected in the figures shown in the following table:

	From Nashville.		From Lebanon.		From Watertown.	
	C. L.	L. C. L.	C. L.	L. C. L.	C. L.	L. C. L.
Eggs to—						
Baltimore	79.9	79.9	94.9	94.9	94.9	101.9
Philadelphia	80.9	80.9	95.9	95.9	95.9	102.9
New York	82.9	82.9	97.9	97.9	97.9	104.9
Providence	88.9	88.9	103.9	103.9	103.9	110.9
Boston	88.9	88.9	103.9	103.9	103.9	110.9
Dressed poultry to—						
Baltimore	90.2	90.2	102.2	105.2	108.2	112.2
Philadelphia	91.2	91.2	103.2	106.2	109.2	113.2
New York	93.2	93.2	105.2	108.2	111.2	115.2
Providence	100.2	100.2	112.2	115.2	118.2	122.2
Boston	100.2	100.2	112.2	115.2	118.2	122.2
Live poultry to—						
Baltimore	79.9	....	94.9	....	94.9	....
Philadelphia	80.9	....	95.9	....	95.9	....
New York	82.9	....	97.9	....	97.9	....
Providence	88.9	....	103.9	....	103.9	....
Boston	88.9	....	103.9	....	103.9	....

It is suggested on behalf of the Tennessee Central that were it not for this influence on the rates from Lebanon and Watertown of the low basis applying from Nashville an alternative way to construct the through rates from Lebanon and Watertown would be to combine the rates to and from Harriman, the Tennessee Central's junction point with the Southern Railway in the through route to the east. It is shown that rates so constructed would be materially higher than the present rates which base on Nashville, not only from Lebanon and Watertown, but from stations east thereof to within a

very short distance of Harriman, as is evidenced by the figures shown in the following table:

	Distance from Nashville.	Distance to Harriman.	Carloads.		Less than carloads.	
			Present rates.	Harriman combination.	Present rates.	Harriman combination.
	Miles.	*Miles.*				
Eggs:						
Nashville	....	166	$0.829	....	$0.829	....
Lebanon	32	134	.979	$1.54	.979	$1.54
Watertown	45	121	.979	1.43	1.049	1.48
Buffalo Valley	70	96	.979	1.38	1.129	1.38
Cookeville	91	75	.979	1.30	1.229	1.30
Monterey	109	57	.979	1.26	1.229	1.28
Crossville	131	35	.979	1.20	1.20	1.28
Dressed poultry:						
Nashville	....	166	.932	....	.932	....
Lebanon	32	134	1.052	1.16	1.082	1.54
Watertown	45	121	1.112	1.17	1.152	1.55
Buffalo Valley	70	96	1.17	1.17	1.272	1.58
Cookeville	91	75	1.13	1.13	1.432	1.49
Monterey	109	57	1.07	1.07	1.41	1.41
Crossville	131	35	.94	.94	1.27	1.27

The rates on live poultry, in carloads, from the above points to New York, in cents per 100 pounds, are as follows:

Nashville	82.9
Lebanon	97.9
Watertown	97.9
Buffalo Valley	97.5
Cookeville	97.9
Monterey	97.9
Crossville	97.9

It is testified that the local rates of the Tennessee Central from Lebanon and Watertown to Nashville compare favorably with the rates of other and stronger lines in the southeast for similar distances, as is shown by the following table of rates from points in Tennessee:

Rates on eggs.

From—	To—	Miles.	C. L.	L. C. L.
Lebanon [1]	Nashville	32	15	16
Murfreesboro [2]	....do	32	20	30
White Bluff [2]	....do	30	21	31
South Tunnel [3]	....do	34	25	35
Ewells [3]	....do	32	20	30
Dorton [1]	Harriman	32	15	16
Graysville [4]	Chattanooga	33	25	35
Tasso [5]	....do	35	27	35
Talbott [5]	Knoxville	35	25	35
Philadelphia [5]	....do	32	21	35
Watertown [1]	Nashville	45	22	30
Fosterville [2]	....do	45	25	35
Pond [2]	....do	45	25	35
Mitchellville [3]	....do	45	30	30
Columbia [3]	....do	46	30	30
Pomona [1]	Harriman	45	22	32
Evansville [4]	Chattanooga	44	30	30
Sanford [5]	....do	45	30	30
Russellville [5]	Knoxville	46	30	30
Reagan [5]	....do	46	30	30

[1] Tennessee Central.
[2] Nashville, Chattanooga & St. Louis.
[3] Louisville & Nashville.
[4] Cincinnati, New Orleans & Texas Pacific.
[5] Southern Railway.

It is further testified that the local rates of the Tennessee Central compare favorably with the rates prescribed by the railroad commissions of certain of the southern states, as illustrated by the following table:

	Miles.	1	2	3	4	5	6
Lebanon to Nashville	32	18	15	14	12	12	12
Georgia standard scale	32	24	21	19	17	14	11
North Carolina scale	32	29	25	21	17	13	10
South Carolina scale ("for large lines")	32	33	31	27	24	18	17
Watertown to Nashville	45	25	22	22	18	18	18
Georgia standard scale	45	20	25	24	21	17	13
North Carolina scale	45	33	27	23	19	14	11
South Carolina scale ("for large lines")	45	38	34	30	29	20	19

Whatever may have been the effect of the competition of the water lines, above referred to, on the general level of rates from Nashville to the eastern points here involved, the facts adduced upon this record lead to the conclusions that: (1) The rates now in effect from Nashville to points on the Atlantic seaboard are not within the control of the Tennessee Central Railroad; (2) the statements of the operating expenses and earnings of the Tennessee Central Railroad for the past several years, as shown by its reports to this Commission, indicate clearly that, aside from all questions of interest on bonds and investments, it has had great difficulty in meeting its actual operating expenses out of its earnings; (3) the persons and communities along the line of the Tennessee Central and served by it are interested in its maintenance as a channel of commerce for their use, and any orders of this Commission looking toward reductions in its rates, under the circumstances now shown to exist, in view of its small volume of traffic, difficult operating conditions, and proportionately large expenses of operation, would be unjustified; (4) the rates here in question from Lebanon and Watertown are not unreasonable in and of themselves, nor under the circumstances shown here to exist unduly prejudicial to Lebanon and Watertown and unduly preferential of Nashville. We shall, however, expect the defendants to remove the anomaly whereby the carload and less-than-carload rates from Watertown to eastern destinations are the same, while the carload rates from Lebanon are lower than the less-than-carload rate; (5) upon all the facts, the relief asked for under the fourth section should be granted.

An order will be entered dismissing the complaint and granting the fourth section relief prayed.

No. 7353.

NITRO POWDER COMPANY

v.

WEST SHORE RAILROAD COMPANY ET AL.

Submitted October 7, 1916. Decided April 28, 1917.

Following original report, reparation awarded on shipments of high explosives from Kingston and Port Ewen, N. Y., to Boston, Mass., and other points in New England.

J. D. Gray for complainant.

J. M. Sternhagen, *C. L. Andrus*, and *Madison C. Gonterman* for defendants.

George Cassidy for Rutland Railroad Company.

REPORT OF THE COMMISSION ON REHEARING.

BY THE COMMISSION:

In the original report in this case, 35 I. C. C., 77, we found that defendants' carload and less-than-carload rates on high explosives from Kingston and Port Ewen, N. Y., to Boston, Mass., and other points in New England were and for the future would be unreasonable, to the extent that they exceeded and might exceed joint rates in excess of the first-class rates and double first-class rates, respectively, contemporaneously maintained from and to the points involved. Reparation was found due on shipments moving subsequently to October 6, 1912, but no order for reparation was entered, as the record was insufficient. The customary statement from complainant relative to the shipments and its verification by defendants was required. Upon petition filed by defendants the case was reopened for the purpose of determining the amount of reparation due and the party or parties entitled thereto.

After our original report was made the complainant assigned its claim for reparation to the National Ulster County Bank of Kingston, which subsequently reassigned it to complainant. Complainant presented statements covering 354 shipments which originated on the West Shore Railroad and 689 which originated on the New York, Ontario & Western Railroad, all of which moved to New England points over the defendants' lines. At the hearing complainant withdrew its claim for reparation on numerous shipments either because they were barred by the statute of limitations or because of an agreement had with defendants. There remain for consideration approximately 300 shipments which originated on the West Shore

and 525 which originated on the New York, Ontario & Western. Complainant offered in evidence paid freight bills covering only about 50 per cent of these shipments. Following our practice, the freight bills were not received in evidence. The statements filed by complainant in support of its claim for reparation indicate the shipments with respect to which it is in possession of the paid freight bills. Complainant's witnesses testified that its accounts had been assigned to a firm of bankers other than that mentioned above as collateral security for moneys advanced; that the shipments in question were sold f. o. b. destination, and in a few instances complainant had prepaid the freight charges; that the bankers credited complainant's consignees with the amount of freight paid by them, collected the balance of the invoice price, and transmitted the paid freight bills to complainant; and that in those instances where no paid freight bills were produced, an allowance was made to the consignees without requiring the production of the paid freight bills. No evidence was offered to show that the freight charges had been paid on shipments for which the paid freight bills were not produced, nor was any explanation made as to why they were not in possession of complainant other than a statement that no effort has been made to obtain them. As to those shipments the facts of record are insufficient to base an award of reparation.

Defendants contend that in order to prove damage complainant must show that the price at which the goods were sold did not include the freight charges for which an allowance was made to the consignee. While that question is concluded by our original decision, it may be said that a complainant is not required to negative the possibility of having been reimbursed the freight charges through the selling price of the goods. No award of reparation can be made except to the person to the contract of carriage who paid and bore the transportation charges. *Hygienic Ice Co.* v. *C. & N. W. Ry. Co.*, 37 I. C. C., 384.

We find that the shipments for consideration were made as stated; that complainant paid and bore the charges thereon and was damaged to the extent of the difference between the charges paid and the charges which would have accrued at the rates found to have been reasonable in our original report herein, and that it is entitled to reparation, with interest. Complainant should prepare a statement showing the details of the shipments upon which reparation has been found to be due, in accordance with rule V of the Rules of Practice, which statement should be submitted to defendants for verification. Upon receipt of a statement so prepared and verified we will consider the entry of an order awarding reparation.

HALL, *Chairman*, dissents.

No. 8494.

BRUNSWICK-BALKE-COLLENDER COMPANY

v.

TOLEDO, SAGINAW & MUSKEGON RAILWAY COMPANY ET AL.

Submitted March 17, 1916. Decided April 27, 1917.

Refusal of defendant carriers to refund prepaid freight charges on a carload of billiard table parts shipped from Muskegon, Mich, in August, 1913, to Mexico City, Mexico, and damaged by fire after being loaded on board the exporting steamer at New Orleans, La., not shown to be in violation of the provisions of the act to regulate commerce. Cause of action, if any, is one for loss and damage, cognizable in the courts. Complaint dismissed.

James J. Mullin for complainant.

Fred G. Wright for St. Louis, Iron Mountain & Southern Railway Company and its receiver; and Texas & Pacific Railway Company.

James Cameron for Toledo, Saginaw & Muskegon Railway Company; Grand Trunk Railway system; and Wabash Railway Company and its receivers.

REPORT OF THE COMMISSION.

CLEMENTS, *Commissioner*.

The facts in this case are not disputed and are as follows:

On August 22, 1913, the complainant, a corporation with principal office at Chicago, Ill., caused to be forwarded from its factory at Muskegon, Mich., one carload of billiard table parts, including five boxes of varnish, consigned to the Brunswick-Balke-Collender Company, Mexico City, Mexico.

The shipment was routed via the Grand Trunk Railway system, Wabash Railway, St. Louis, Iron Mountain & Southern Railway, Texas & Pacific Railway, Wolvin line steamer at New Orleans, La., c/o D. Lousteau & Co., Vera Cruz, Mexico., and freight charges prepaid in the sum of $639.05 at joint through rates under F. A. Leland, agent's, I. C. C. 849, which tariff provided:

Rates shown herein are subject to the conditions of carriers' bill of lading. Rates via rail and water shown herein include marine insurance.

By proper reference and concurrence this tariff, and the carriers parties thereto, became subject to the provisions of the western classification which embodied the terms and conditions of the so-called uniform straight bill of lading issued by the initial carrier.

The shipment was transported and delivered to the Wolvin line at New Orleans, and $367.63 of the total freight charges was paid that company by the rail carriers to the port to cover the movement thence to destination. After being loaded on the steamer and before it left the dock the shipment appears to have been damaged by fire and water to the extent of becoming practically worthless, and consequently was not forwarded to destination. The property was covered by insurance in the amount of $4,016.56, representing the cost of production, as shown on the consignor's invoice to its Mexican branch house, which sum has been paid to complainant by the insurance adjusters. The steamship company, however, declined complainant's claim for refund of the prepaid freight charges, or any portion thereof, on the ground that its bill of lading provided that "freight prepaid shall not be returned, goods or vessel lost or not lost." Upon similar refusal on the part of the rail carriers the complainant filed this complaint, based on the applicability of the following provision contained in the bill of lading issued by the initial line:

> The amount of any loss or damage for which any carrier is liable shall be computed on the basis of the value of the property (being the bona fide invoice price, if any, to the consignee, including the freight charges, if prepaid) at the place and time of shipment;

alleging that the action of the defendants in retaining the freight charges is unjust, unreasonable, and in violation of the act to regulate commerce. This bill of lading was within a few days after its issuance at Muskegon tendered to the agent of the Wolvin line at Chicago by complainant's representative at that point in exchange for the steamship company's export bill of lading, for the purpose of clearing the shipment at New Orleans and negotiating custom duties with the republic of Mexico.

There is no allegation either that the rates on which the charges were assessed or the conditions of the rail carriers' bill of lading were, or are, unreasonable, but it is urged that under the terms of this bill of lading and the provisions of the Carmack amendment to the act to regulate commerce the initial carrier is liable to the owner of the property for the value thereof, and the prepaid freight charges, by reason of the failure to deliver the shipment to the consignee at destination.

The statute referred to as determining the liability of the carriers was enacted in 1906 and provided:

> That any common carrier, railroad, or transportation company *receiving property for transportation from a point in one state to a point in another state* shall issue a receipt or bill of lading therefor, and shall be liable to the

lawful holder thereof for any loss, damage, or injury to such property caused by it or by any common carrier, railroad, or transportation company to which such property may be delivered or over whose line or lines such property may pass, and no contract, receipt, rule, or regulation shall exempt such common carrier, railroad, or transportation company from the liability hereby imposed.

This provision was extended by the Cummins amendment, effective June 2, 1915, so as to include and apply to property received for transportation "*from any point in the United States to a point in an adjacent foreign country.*"

It is clear from the wording of the pertinent provisions of these acts of Congress, considered as of the time of their taking effect, that when the shipment in question moved, during the year 1913, the initial carrier receiving property at a point in the United States for transportation to a foreign country was not liable for loss, damage, or injury thereto when caused by carriers parties to the transportation beyond our ports or borders. While it is true that this shipment moved from a point in one state to a point in another state of the United States in reaching the port of export, its essential character was that of "foreign commerce," or *property received for transportation to an adjacent foreign country;* and that Congress did not regard the Carmack amendment as applicable to such shipments may be inferred from the fact above indicated that the provisions of that amendment were extended by the Cummins amendment to specifically apply to commerce to an adjacent foreign country. In *Hamlen & Sons Co.* v. *Illinois Central R. R. Co.*, 212 Fed., 324, a case involving somewhat similar questions, the United States district court for the eastern district of Arkansas stated:

* * * as the Carmack amendment applies only to transportation between the states, and not to foreign countries, the defendant is clearly not liable under the bill of lading, even if it had been the initial carrier which had issued the bill of lading, * * *.

In our report *In re Cummins Amendment*, 33 I. C. C., 682, in respect to the applicability of the provisions of that amendment to commerce between the United States and a nonadjacent foreign country, we said:

8. Does the amendment to the act apply to export and import shipments to and from foreign countries not adjacent to the United States?

This must be answered in the negative, in view of the fact that, while specifically stating that its terms shall apply to property received for transportation from certain points to certain other points, it makes no reference to shipments from a point in the United States to a point in a nonadjacent foreign country, or from a nonadjacent foreign country to a point in the United States.

The refund of the freight charges, provided for in the first bill of lading, is incident to and connected with the loss resulting from the physical damage to the property, and had any of the defendant

carriers parties to the transportation within the United States been shown to have been responsible for such loss it is seen that they hold themselves out by duly established bill of lading and tariff provisions to refund the transportation charges. It will also be noted that the provision above quoted from the bill of lading first issued for this shipment, upon which complainant largely rests its case, while fixing the measure of damages where the carrier is under the law liable therefor, does not undertake to prescribe the conditions under which it will be liable. The same bill of lading also includes the following provision:

SEC. 9. Except in case of diversion from rail to water route, which is provided for in section 8 hereof, if all or any part of said property is carried by water over any part of said route, such water carriage shall be performed subject to the liabilities, limitations, and exemptions provided by statute and to the conditions contained in this bill of lading not inconsistent with such statutes or this section, * * *.

In this connection the defendants in their brief call attention to the following from the laws of the United States affecting water carriers:

SEC. 4282. No owner of any vessel shall be liable to answer for or make good to any person any loss or damage which may happen to any merchandise whatsoever, which shall be shipped, taken in, or put on board any such vessel, by reason or by means of any fire happening to or on board the vessel, unless such fire is caused by the design or neglect of such owner. (U. S. Comp. Stat., 1901, p. 2943.)

However, this Commission is without jurisdiction to determine either the legal liability of the Wolvin line for the physical damage to the property in question or the propriety of the bill of lading provision relied upon by that carrier in declining to refund the freight charges, the whole, in our view, constituting a single cause of action or claim, the one being an integral part of the other.

While it is well settled that we may award damages for reparation of injuries resulting from violations of the act to regulate commerce, it is equally well settled that we have no authority to award damages due to other causes. It therefore seems clear that if complainant has a valid cause of action it is one for loss and damage cognizable in the courts and not by this Commission.

No violation of any of the provisions of the act having been disclosed upon this record, it follows that the complaint must be dismissed, and it will be so ordered.

McCHORD, *Commissioner*, dissents.

THE WISCONSIN RATE CASES.[1]

Submitted June 7, 1916. Decided April 25, 1917.

In these cases complainants attack class rates, and in some instances commodity rates, applicable between certain Wisconsin cities and points in official classification territory east of the Indiana-Illinois state line. Following the submission of the cases the carriers canceled their joint class rates applicable from central freight association territory to that part of the state of Wisconsin to which those rates exceeded the lowest combinations, and made certain other changes responsive to the matters complained of. Upon all the evidence; *Held*, That the class rates applicable to and from certain cities in southern Wisconsin are unreasonable and unduly prejudical. Reasonable maximum class rates prescribed for the future. Complaints filed by other Wisconsin cities dismissed.

S. J. Bolton, *W. W. West*, and *F. M. Elkinton* for La Crosse Shippers' Association.

John S. Burchmore, *Luther M. Walter*, and *Sam T. Swansen* for southern Wisconsin cities.

J. N. Tittemore, *Frank Lyon*, *F. M. Elkinton*, and *H. N. McEwen* for central Wisconsin cities.

F. M. Elkinton for eastern Wisconsin towns.

C. C. Wright, *Robert H. Widdicombe*, *D. P. Connell*, *W. W. Collin, jr.*, *O. W. Dynes*, *J. N. Davis*, *R. B. Scott*, *K. F. Burgess*, *Ernest S. Ballard*, *A. H. Lossow*, and *W. D. Burr* for various defendants.

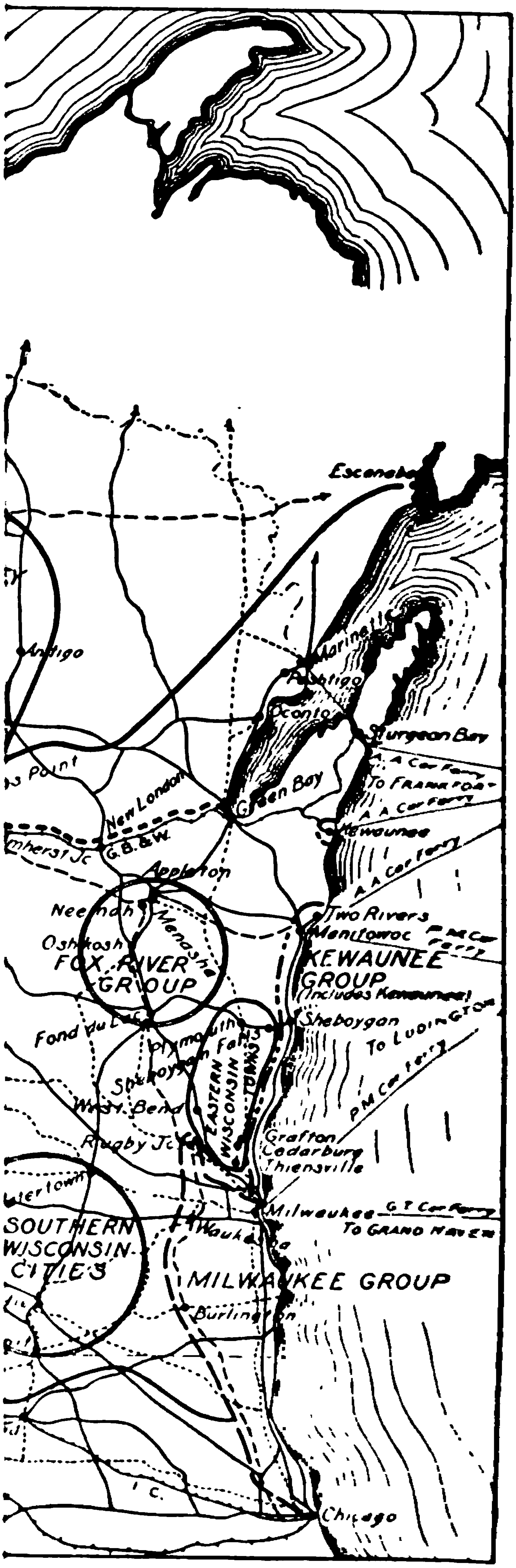
Carl D. Jackson, *T. A. McGrath*, *Henry C. Barlow*, *Felix J. Streyckmans*, *Frank Barry*, *William H. Pauly*, *J. E. Bryan*, *Frank A. Larish*, *John S. Burchmore*, *F. M. Elkinton*, and *S. J. Bolton* for various interveners.

Report of the Commission.

Meyer, *Commissioner:*

The cases with which this report deals put in issue rates between points in Wisconsin and points in official classification territory east of the Indiana-Illinois state line. Each of these cases was accorded a separate hearing, and with a single exception they were separately

[1] This report embraces complaints in—No. 7897, La Crosse Shippers' Association et al. v. Ann Arbor Railroad Company et al.; No. 8353, Madison Board of Commerce et al. v. Chicago & North Western Railway Company et al.; No. 9511, Wisconsin Freight Relief Association et al. v. Chicago & North Western Railway Company et al.; No. [illegible], La Crosse Shippers' Association et al. v. Ann Arbor Railroad Company et al.; and No. 8581, Cedarburg Advancement Association et al. v. Ann Arbor Railroad Company et al.



Escanaba
Antigo
Marinette
Peshtigo
Oconto
Sturgeon Bay
A. A. Car Ferry
To Frankfort
A. A. Car Ferry
Kewaunee
A. A. Car Ferry
Green Bay
New London
G.B.&W.
Appleton
Neenah
Menasha
Oshkosh
FOX RIVER GROUP
Two Rivers
Manitowoc
P.M. Car Ferry
KEWAUNEE GROUP
(Includes Kewaunee)
Sheboygan
To Ludington
P.M. Car Ferry
Fond du Lac
Plymouth
Sheboygan Falls
EASTERN WISCONSIN TOWNS
West Bend
Grafton
Cedarburg
Thiensville
Rugby Jc.
Milwaukee
G.T. Car Ferry
To Grand Haven
SOUTHERN WISCONSIN CITIES
Waukesha
MILWAUKEE GROUP
Burlington
I.C.
Chicago

submitted on oral argument. By reason, however, of the necessary relation between the rates from and to the complaining cities and of the general similarity in the evidence offered in the voluminous records, all of these cases will be considered in one report.

The several complaints were brought in behalf of shippers located at the following points: In No. 7897, involving westbound rates, and in No. 8525, involving eastbound rates, at La Crosse, Wis.; in No. 8353, at Madison, Beloit, Janesville, Stoughton, and Watertown, Wis., hereinafter referred to as the southern Wisconsin cities; in No. 8511, at Oshkosh, Fond du Lac, Appleton, Neenah, and Menasha, Wis., hereinafter referred to as the Fox River Valley group; at Wausau, Merrill, Rhinelander, Antigo, Grand Rapids, Stevens Point, Marshfield, Athens, Edgar, Marathon City, and Mosinee, Wis., hereinafter referred to as the Wisconsin River Valley group; at Eau Claire, Chippewa Falls, and Menomonie, hereinafter referred to as the Chippewa Valley group; in No. 8581, at Cedarburg, Grafton, Plymouth, Sheboygan Falls, Thiensville, and West Bend, hereinafter referred to as the eastern Wisconsin towns. When considered collectively all of the Wisconsin points embraced in No. 8511 will be referred to as the central Wisconsin cities. The Wisconsin cities and towns named in these complaints are shown on the accompanying map, with their railroad connections.

THE ISSUES.

The principal allegations of the several complaints stated in general terms are these:

1. That the class rates applicable between Wisconsin points and points in trunk line and New England territories are unreasonable and unduly prejudicial.

2. That the class rates applicable between Wisconsin points and points in central freight association territory are unreasonable and unduly prejudicial.

3. That such commodity rates as are published [1] for application between the Wisconsin points and points in trunk line, New England, and central freight association territories are unreasonable and unduly prejudicial.

4. That the defendant carriers fail to conform to various provisions of the act in that they do not publish and maintain reasonable and nondiscriminatory joint through class and commodity rates between points in Wisconsin and points in the above-named territories.

[1] The complaints of the central Wisconsin cities do not attack commodity rates nor is complaint made of commodity rates from La Crosse eastbound.

5. That joint through class rates should be established for application between trunk line territory and certain Wisconsin cities made upon stated percentages of the New York-Chicago rates.

Certain fourth section departures are also alleged. In connection with these cases there were set for hearing the following fourth section applications:

6. Such portions of applications No. 2045, filed by the Illinois Central Railroad Company, Nos. 2060 and 2065, filed by J. F. Tucker, agent, and No. 3786, filed by the Chicago & North Western Railway Company, by which authority is sought to continue to charge for the transportation of articles moving under class rates from points in central freight association territory to points in Wisconsin a greater compensation as a through rate than the aggregate of the intermediate rates to and from Chicago and Milwaukee and other intermediate points.

BASIS OF THE ALLEGATIONS OF UNREASONABLENESS AND UNDUE PREJUDICE.

The attack upon the rates in issue centers in a comparison of those rates with rates to and from upper Mississippi River crossings, such as Dubuque and Clinton, Iowa, points in northern Illinois, such as Rockford and Freeport, and certain so-called 100 per cent points, such as Chicago, Milwaukee, and Manitowoc. While some of the records contain other comparisons, it is upon the rates to and from the points named that complainants chiefly rely to establish their allegations of unreasonableness and undue prejudice. In this connection it is pointed out that the present rates between the upper Mississippi River crossings and points east of the Indiana-Illinois state line are the result of the Commission's orders in *The Mississippi River Case*, 28 I. C. C., 47, with certain increases which followed our decision in *The Five Per Cent Case*, 32 I. C. C., 325, and that Rockford and Freeport have been accorded their present respective percentages of the New York-Chicago rates in consequence of the Commission's decision in *Chamber of Commerce of Freeport, Ill.*, v. *Ry. Co.*, 33 I. C. C., 673.

The record in those cases and in others considered by the Commission shows that the complaint of the southern Wisconsin cities was foreseen. Thus, in *The Mississippi River Case*, *supra*, with reference to the effect upon the carriers' revenues of applying the then effective St. Louis basis, or 88-cent scale, to the upper crossings, the Commission said that "the effect would probably extend to northern Missouri, southern Minnesota, and southern Wisconsin," ib., page 57. In *Chamber of Commerce of Freeport, Ill.*, v. *Ry. Co.*, *supra*, we stated, at page 678, that—

Defendants call attention to the fact that any reduction which is made in the Freeport and Rockford rates will increase the disparity between their rates and those prevailing at Janesville and Beloit, and other points immediately north of Freeport and Rockford, to and from which the class rates are now made by combination on Chicago.

With reference to this contention and others of a similar character we said, at page 679:

Nor are we impressed with the possible bearing which this decision may have on the rates to and from other points in Illinois or upon the rates to and from points immediately north of Freeport and Rockford which are not now included in prorating territory.

The class rates to and from Beloit which are here in issue were attacked in *Rosenblatt & Sons* v. *A. A. R. R. Co.*, 33 I. C. C., 324, and it was there held that the complainants had not sustained the burden of showing the rates in issue to be unreasonable or unduly prejudicial.

INTERVENTIONS.

In one or more of these cases petitions of intervention were filed by the Railroad Commission of Wisconsin,[1] the Minneapolis Civic & Commerce Association of Minneapolis, Minn., the Freight Traffic Committee of the Chicago Association of Commerce,[2] the Merchants and Manufacturers' Association of Milwaukee,[2 1 3] the Citizens' Association of Manitowoc,[3] and the Manitowoc Retailers' Association,[3] the Pulp & Paper Manufacturers' Traffic Association,[4] the Cheese Shippers' Traffic Association,[5 6 1] the Merchants and Manufacturers' Association of Beaver Dam, Wis.,[1] the Horicon Advancement Association of Horicon, Wis.,[1] the Michigan Paper Mills Traffic Association,[1] the Northern New York Traffic Association,[1] the American Freight Traffic Bureau of Milwaukee,[1] the La Crosse Shippers' Association,[1] and the complainants in the southern Wisconsin cities case.[1]

The Railroad Commission of Wisconsin intervened in response to the request of the complainants in the central Wisconsin cities case, as required by state statute, but took no active part in the hearing. In behalf of Beaver Dam and Horicon the petition of intervention is substantially the same as the complaint of the Fox River Valley group. The complainants in the La Crosse and the southern Wisconsin cities cases intervened in the case of the central Wisconsin cities because of the relation of the issues in the several cases, but without supporting or opposing the contentions of the complainants

[1] In the central Wisconsin cities case.
[2] In the southern Wisconsin cities case.
[3] In the eastern Wisconsin towns case.
[4] In all cases except the westbound La Crosse case.
[5] In the westbound La Crosse case.
[6] In the eastbound La Crosse case.

in that case. As to all of the other interventions, it may be stated generally that they are in opposition to the complaints and in favor of substantially the present adjustment of class rates to and from Wisconsin points.

THE PROPOSAL TO EXTEND PRORATING TERRITORY.

With the exception of La Crosse, which asks for through rates related to the rates to and from Dubuque, the complaints filed on behalf of all of the complaining cities ask that joint through class rates be established from and to trunk line territory on a percentage of the New York-Chicago rates. The percentages alleged to be reasonable would result in very substantial reductions in present rates. It thus appears that certain of the complainants not only seek substantially lower rates but, independently of that issue, ask for an extension of prorating territory to a large part of the state of Wisconsin. By prorating territory is meant "the territory west of Chicago to and from which through rates are published from and to central freight association, trunk line, and New England territories." In this connection the records contain considerable discussion of the method of making rates as distinguished from the amount of aggregate charges to shippers. Upon the part of the defendant carriers any extension of the present limits of prorating territory is vigorously opposed. We shall here briefly outline the contentions of the parties with respect to this issue before considering the measure and relation of the rates themselves. This discussion will serve to outline the viewpoints of complainants and defendants on one of the most important questions presented by these cases.

The method of making class rates applicable between trunk line territory and points in central freight association territory has been described in *Saginaw Board of Trade* v. *Grand Trunk Ry. Co.*, 17 I. C. C., 128, and the method employed between trunk line territory and points in prorating territory is described in *Chamber of Commerce of Freeport, Ill.*, v. *Ry. Co.*, *supra.* These explanations need not be repeated here. Complainants in the southern Wisconsin cities case ask, for example, that class rates between New York and Beloit be made 112 per cent of the New York-Chicago rates, subject to the official classification. This is the percentage by which class rates are determined for application between New York and Rockford, situated 18 miles south of Beloit. While not all of complainants' witnesses in that case were in accord with the view that a percentage basis of joint rates is essential, considered apart from the measure of the rates themselves, that basis is strongly urged by other witnesses and by counsel. The reasons for this position are, first, that if Beloit is to be accorded the same rates as Rockford the percentage relation is

necessary, unless proportional rates are prescribed for the transportation between Beloit and Chicago, which would vary with each point of origin or destination; and, second, that the publication of joint through rates on the percentage basis, subject to a single classification, is comparatively simple and tends to avoid confusion in determining the rates properly applicable to any movement. Using for illustration rates on first class, the rate from New York to Chicago is 78.8 cents, to Rockford 88.3 cents, the difference 9.5 cents. The rate from Syracuse to Chicago is 55.2 cents, to Rockford 61.8 cents, the difference 6.6 cents. Thus to accord the same rates to Beloit as to Rockford would require different proportional rates, depending on the point of origin or destination, if rates were to be separately established for the transportation west of Chicago. In some instances rates eastbound are not the same as those westbound. This would make necessary other proportional rates. This necessity for varying proportionals, however, is based upon the establishment of exactly the same rates to and from Beloit as are contemporaneously in effect to and from Rockford. While the desirability of joint through rates upon the percentage basis is strongly urged by certain complainants, they take the position that the amount of the transportation charges is the substantial issue.

The carriers, in opposing any extension of prorating territory, have defended the present lines of that territory by explanations of its development in the past, by its operation under the present rate adjustments, and by the contention that further agitation for rate reductions may be anticipated in the future if prorating territory is extended to the complaining cities. They assert that prorating territory was extended to cities in northern Illinois and to Dubuque by competitive influences of the overlapping of the western lines in territory reached by the eastern carriers, and to a portion of southeastern Wisconsin by the competition for through traffic of the lines crossing Lake Michigan by car ferries; that these competitive conditions have compelled a basis and level of rates to northern Illinois and eastern Wisconsin lower than would normally apply but are not controlling in the Wisconsin territory involved in these cases; that the normal basis of class rates between Wisconsin and points east of the Indiana-Illinois state line is the lowest combination of local or proportional rates on the established gateways. They here defend that basis as reasonable, and urge that although higher rates result than to points in Illinois for similar distances the differences in competitive and traffic conditions are such as to preclude a finding of unjust discrimination or undue prejudice.

Several of the trunk line systems, through their affiliated lines, reach St. Louis over their own rails. They carried the prorating territory

to that point upon a fixed relation to the New York-Chicago rates. The lines of one or more of these systems extend to Joliet, Peoria, and Beardstown, Ill., and to Keokuk, Iowa. The lines serving northwestern Illinois and the state of Wisconsin have no rails east of Chicago. In order to participate in eastern traffic to Peoria the Chicago, Rock Island & Pacific Railway, hereinafter called the Rock Island, was forced to maintain the prorating basis of rates made by the direct lines. The line of the Rock Island runs through Spring Valley, Ill., and the Chicago & North Western Railway, hereinafter referred to as the North Western, in meeting competition on eastern traffic at that point, carried back the prorating basis to De Kalb, Ill. The North Western reaches Seatonville, Ill., and the Chicago, Milwaukee & St. Paul Railway, hereinafter called the Milwaukee, in meeting competition at that point, carried the prorating basis north to Davis Junction, a short distance south of Rockford. Thus to a large part of northern Illinois the prorating basis of rates was carried by the overlapping of the western lines in territory served by the single-line systems from the east. The present northern boundary of prorating territory in northwestern Illinois is the Illinois Central from Rockford to Dubuque, and in meeting the Rockford rates the North Western has carried the same prorating basis through Harvard, Ill. The carriers urge that the Illinois Central is the natural and logical northern boundary of prorating territory, inasmuch as it is the most northerly route from Chicago to the Missouri River crossings. In order to participate in through traffic to common points west of the Mississippi River it was necessary for the Illinois Central to establish for proportional application to Dubuque the same rates as were maintained by the eastern lines locally at St. Louis. Thus prior to the decision of the Commission in *The Mississippi River Case*, *supra*, the 88-cent scale from New York to St. Louis was applied proportionally through the upper Mississippi River crossings, including Dubuque, while a 97-cent scale was in effect to those crossings on local traffic. The measure of the proportional rates exerted a necessary influence upon the rates which could be charged for local traffic.

Other reasons urged by the carriers in opposing the extension of prorating territory will be more fully developed in connection with the discussion of the rates under attack.

WISCONSIN RATE GROUPS.

The accompanying map shows certain class-rate groups which may be briefly referred to before undertaking a detailed description of the present bases of rates to and from Wisconsin points.

TRUNK LINE TERRITORY.

Between trunk line territory and Milwaukee the Chicago rates are applied either via Chicago or via car-ferry lines. Certain territory intermediate to Milwaukee or Chicago on and east of the Soo line through Rugby Junction, Waukesha, and Burlington takes the same basis. The Chicago rates also apply by car-ferry lines, but not via Chicago, to and from Manitowoc and points on the line of the North Western intermediate between Manitowoc and Milwaukee, and by cross-lake lines to and from Kewaunee and Marinette.[1]

Between trunk line territory and Green Bay and De Pere, Wis., class rates via Milwaukee, Manitowoc, or Kewaunee are 6, 5, 4, 3, 2, 2 cents higher than the rates by car-ferry routes to and from these gateways, and 11.5, 10, 7.5, 5.5, 4.5, and 3.5 cents higher between trunk line territory and Oconto, Peshtigo, and Marinette, Wis., and Menominee, Mich. Rates between trunk line territory and Marinette and Menominee are on a 100 per cent basis via cross-lake car-ferry routes reaching those points.

Between trunk line territory and St. Paul, westbound, joint through rates are in effect. These rates, which will be more fully described in a subsequent part of this report, apply to La Crosse and to certain Wisconsin points intermediate to St. Paul and La Crosse.

CENTRAL FREIGHT ASSOCIATION TERRITORY.

The Wisconsin rate groups, with reference to rates from and to points in central freight association territory, will be briefly outlined as they existed at the time these complaints were filed. Some important changes have since been made which will be described in connection with the discussion of the rates under attack. On the accompanying map are shown two large groups and three smaller groups.

The St. Paul group, which takes St. Paul rates, embraces the greater part of Wisconsin territory north of the line of the Green Bay & Western from Marshland to Merrillan, the Chicago, St. Paul, Minneapolis & Omaha to Marshfield, the Soo line to Amherst Junction, the Green Bay & Western to Green Bay.

The Winona group, taking the same rates as Winona, Minn., embraces Wisconsin territory on and south of that line, except the Kewaunee and Milwaukee groups. The differences in class rates from Pittsburgh to St. Paul and Winona are 6, 5, 4, 3, 3, and 2 cents for the respective classes.

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[1] The records in Dockets 8511 and 8581 contain an account of the early establishment of the cross-lake service and rates to the west bank ports of Lake Michigan, by Arthur Patriarche, a witness for the defendants, who has been in railroad service in that general territory since 1862.

Class rates between central freight association points and Green Bay, De Pere, Oconto, Peshtigo, Marinette, and Menominee via Milwaukee, Manitowoc, or Kewaunee are made by adding the same differentials over the proportional rates to and from those gateways as are rates between points in trunk line territory and the points above named. Those differentials have already been given.

Kewaunee and points on the North Western from Two Rivers to Milwaukee take Milwaukee rates via car-ferry lines but not via Chicago. These points for convenience may be called the Kewaunee group.

The Milwaukee group includes all points on and east of the Soo line through Rugby Junction, Waukesha, and Burlington.

The New London group included New London and a few other stations. Rates to this group were made by the Green Bay & Western and were met by the Chicago & North Western over its less direct line. This group no longer exists.

With reference to each of the cases before us we shall state: (1) How the present rates are made; (2) the rates sought by complainants; (3) the chief considerations to which our attention is directed for and against the complaints. Rates from and to New York have been taken as typical of the rate adjustment between the Wisconsin cities and trunk line territory, while either Pittsburgh or Buffalo, and Cincinnati, are similarly used with respect to central freight association territory. Rates are stated in cents per 100 pounds.

LA CROSSE.

(1) To La Crosse joint through class rates are now in effect from trunk line territory, subject to the official classification. These rates are the same as to St. Paul and are made by adding to the New York-Chicago rates the following proportional rates:

Classes	1	2	3	4	5	6
Proportionals	40	34	26	18	16	13

From La Crosse to trunk line territory there are no joint through class rates in effect. The rates to that territory are made by the combination of intermediate rates on the 100 per cent points, such as Chicago. To Chicago the intermediate local rates from La Crosse, subject to the western classification, for the first six classes, are the following:

Classes	1	2	3	4	5	A
Rates	50	42	33	23	18	23

The rates from St. Paul to trunk line territory are made by combination of a 60-cent scale of local rates to Chicago plus the rates beyond.

To La Crosse from points in central freight association territory joint through class rates, subject to the official classification, are in effect. They are the same as to Winona, and also apply from La Crosse to points in central freight association territory. The rates between La Crosse and central freight association territory are lower than the Chicago combination and also lower than the rates between St. Paul and central freight association territory.

(2) La Crosse asks that joint through class rates between points in trunk line territory and that city be made by adding to the rates to and from Dubuque the following arbitraries:

Class	1	2	3	4	5	6
Arbitrary	6	5	4	3	2	2

These are the arbitraries now used in making rates from trunk line and central freight association territories to Green Bay, Wis., over the rates to Milwaukee, Manitowoc, and Kewaunee. They are also, except on fifth class, the difference between the present rates from Pittsburgh to St. Paul and to Winona.

Between points in central freight association territory and La Crosse the same basis is asked, with two exceptions.

From and to certain points in Michigan the arbitraries alleged to be reasonable over the rates to and from Dubuque are:

Class	1	2	3	4	5	6
Arbitrary	2	2	2	1	1	1

From and to the groups embracing Elkhart, Goshen, and La Porte, Ind., the following arbitraries over the rates to and from Dubuque are suggested as making reasonable rates to and from La Crosse:

Class	1	2	3	4	5	6
Arbitrary	3	3	3	2	1½	1

(3) In the following table are shown the present rates, and the distances, from New York to Dubuque and La Crosse, complainants' proposed rates to La Crosse, and the reductions which would result if these proposed rates were to become effective:

From New York to—	Miles.	1	2	3	4	5	6
Dubuque	1,079	92.2	79.9	61.4	43.1	36.9	30.8
La Crosse:							
Present	1,175	118.8	102.3	78.5	54.8	47.5	39.3
Proposed	1,175	98.2	84.9	65.4	46.1	38.9	32.8
Reduction	....	20.6	17.4	13.1	8.7	8.6	6.5

The distances shown are via Chicago. Complainant emphasizes the fact that the short-line distance to La Crosse, 1,107 miles, is made by car-ferry route via Milwaukee. The distance via Chicago is approximately 129 per cent of the distance from New York to Chicago, and that percentage of the New York-Chicago first-class

trunk line and central freight association territories are less than that combination they are described as "subnormal." In discussing the proposal to extend prorating territory we have referred to defendants' evidence as to those competitive influences which have carried the rate levels of that territory almost to the southern boundary of Wisconsin; we have also stated that the rates to Dubuque and other upper Mississippi River crossings were reduced in consequence of our findings in *The Mississippi River Case*, *supra*, those to Freeport and Rockford, Ill., in the *Chamber of Commerce of Freeport, Ill.*, v. *Ry. Co.*, *supra*. It is the position of the carriers that those competitive influences, and the decisions of the Commission as well, were based fundamentally upon the rates from trunk line territory to St. Louis. This view is confirmed by our report in *The Twin Cities Cases*, 33 I. C. C., 577, where the contention was made that the 90-cent scale of rates from New York to the upper Mississippi River crossings, established as a result of our original findings in *The Mississipi River Case*, *supra*, subjected the twin cities to an unjust discrimination. With reference to that contention and our decision in the latter case we said, at pages 580, 581:

> The point is based upon the erroneous premise that the Commission in the *Mississippi River Case* fixed class rates to the upper crossings at a certain differential over the Chicago class rates. * * * We there fixed the class rates to the upper crossings on a relationship with the class rates to the lower crossings and not upon a differential over the Chicago rates. This relationship between the upper and lower crossings has been further emphasized by our action in *The Five Per Cent Case*, 31 I. C. C., 351; 32 I. C. C., 325. Under the findings and orders in that proceeding the class rates to the lower crossings were permitted to be increased to a 92.4-cent scale. The class rates to the upper crossings might have been increased to a 94.5-cent scale; but in view of our finding in *The Mississippi River Case* that the contest between the upper and lower crossings would never come to an end until a parity of rates were established to all the crossings we entered a supplemental order in that case restricting the carriers to a 92.4-cent scale of class rates to the upper crossings, thus putting all the crossings on a parity with respect to traffic to and from trunk line territory. These orders were based upon the relationship of the upper to the lower crossings and not upon any relationship of the upper crossings to Chicago. The further contention now made by the twin cities that the 90-cent scale of rates to the upper crossings, established as the result of our findings in *The Mississippi River Case*, *supra*, subjects the twin cities to an unjust discrimination is not sustained by the record. The all-rail rates to the upper crossings bear a definite relation to the all-rail rates to St. Louis and have too remote a relation to the rail-lake-and-rail rates to the twin cities to justify any finding that the upper crossings rates subject the twin cities to undue disadvantage. The same may be said almost as definitely of the rail-lake-and-rail rates to the upper crossings, which for a long period of years have been a differential under the all-rail rates to those points, while the rail-lake-and-rail rates to the twin cities are based upon the proximity of those communities to the head of the lakes, the all-rail rate to the twin cities being on a $1.15 scale, the same as to Duluth.

It is with relation to the rates to the twin cities and not to Dubuque that the La Crosse rates are constructed, and upon the propriety of this relation the carriers chiefly rely. The establishment of the rates from trunk line territory to the twin cities on the basis of the 40-cent scale over the rates to Chicago is referred to in our discussion of the case of the central Wisconsin cities. It is here sufficient to state that those rates were established through competition between the carriers and are regarded by them as considerably lower than could be required as reasonable for the service performed. They have been applied to La Crosse and are on a 10-cent scale lower than the Chicago combination to that city. The rates from Buffalo and Pittsburgh to La Crosse, which form the basis for rates from central freight association territory, were also made with relation to the twin cities rates. Thus it is the view of the carriers that La Crosse has received the benefit of competitive influences which do not extend to that city, and that this has resulted in lower rates than would otherwise apply. Eastbound to trunk line territory the class rates from both the twin cities and La Crosse are on the full Chicago combination, made by a 60-cent and a 50-cent scale, respectively, over the rates from that gateway. To central freight association territory the joint through class rates from St. Paul and La Crosse are less than the combination on Chicago.

The carriers have offered rate comparisons too numerous to be fully referred to here. A fair instance of these comparisons is found in the rates to Marshalltown, Iowa, which are made by factors approved by the Commission in *The Mississippi River Case*, *supra*, and the *Interior Iowa Cities Case*, 29 I. C. C., 536. From New York and Pittsburgh the class rates to the two cities are as follows:

	Miles.	1	2	3	4	5
From New York to—						
La Crosse	1,175	118.8	102.3	78.5	54.8	47.5
Marshalltown	1,197	126.2	106.2	81.9	59.4	49.2
From Pittsburgh to—						
La Crosse	731	91.3	76	57.5	40.1	34.4
Marshalltown	786	98.3	78.8	59.9	43.6	35.9

THE SOUTHERN WISCONSIN CITIES.

(1) There are no joint through class rates effective between the southern Wisconsin cities and trunk line territory. The through charges are made up of separately established intermediate rates. These intermediate rates between trunk line territory and Chicago or Milwaukee are the local rates between those points, subject to the official classification, while the intermediate rates between Chi-

cago or Milwaukee and the southern Wisconsin cities are, in general, the local rates from or to the nearest 100 per cent point, published as proportional rates, and are subject to the western classification. Thus the proportional class rates from Chicago and Milwaukee to Madison are the same as the local rates from Waukesha, Wis., to Madison. By means of these proportional rates the combination on Chicago or Milwaukee is made the same as the sum of the intermediate rates on Waukesha. In the case of Watertown the proportional rates are also the same as the local rates from Waukesha, while to and from Beloit and Janesville the proportional rates are the same as the local rates from and to Burlington. To Stoughton no proportional rates are in effect, the rates to that point being the combination of intermediate rates on Milwaukee. Stated briefly, the class-rate adjustment between the southern Wisconsin cities and points in trunk line territory is the lowest combination of local or proportional rates and is applicable via either the Chicago or Milwaukee gateway.

To the southern Wisconsin cities from points in central freight association territory joint through class rates were in effect at the time these complaints were filed. They were the same as the rates to Winona and were subject to the official classification. These joint through class rates, with few exceptions, exceeded the combinations of intermediate rates on Chicago and Milwaukee and in many instances they exceed the combination on Rockford. To meet this situation the carriers published numerous joint through rates on particular commodities from points in central freight association territory to the southern Wisconsin cities which equaled the lowest combination. The higher joint through class rates, however, were a source of confusion and litigation. See *Rosenblatt & Sons* v. *C. & N. W. Ry.* Co., 18 I. C. C., 261, 264. A large part of the record in the case of the southern Wisconsin cities is devoted to analysis and criticism of this adjustment. Formerly the same situation existed eastbound, but the joint through class rates applicable to points in central freight association territory which were higher than the sum of the intermediate rates were canceled in 1907 by the action of the lines west of Chicago. Against the judgment of those lines the westbound joint rates were continued in effect through the insistence of the central freight association lines. In so far as they exceeded the combination of intermediate rates they were not defended on this record, and, effective July 1, 1916, were canceled. The territory to which these joint through class rates were canceled, both eastbound and westbound, is indicated on the accompanying map as south and east of the line drawn in a southwesterly direction from Escanaba, Mich. The present rates between this ter-

ritory and central freight association territory east of the Indiana-Illinois state line, in both directions, are now made on the lowest combination of local or proportional rates and are applicable via the Chicago or Milwaukee gateway.

(2) The southern Wisconsin cities ask joint through class rates to and from trunk line territory made upon the following percentages of the New York-Chicago rates: Madison and Stoughton, 115 per cent; Beloit, Janesville, and Watertown, 112 per cent.

Between central freight association territory and Beloit and Janesville it is asked that joint through class rates be established which shall not be higher than the rates contemporaneously effective to and from Rockford, while in behalf of Madison, Stoughton, and Watertown the establishment of joint through class rates is asked not higher than the rates applicable to and from Dubuque.

(3) Beloit and Madison may be taken as representative of the southern Wisconsin cities. To and from Beloit and Madison the proportional class rates applicable from and to Milwaukee and Chicago, which are used in making through class rates for application to traffic originating at or destined to points east of the Indiana-Illinois state line, for the first six classes, are stated in the following table. For purposes of comparison the local class rates are also shown:

	Miles.	1	2	3	4	5	A.
From Chicago to—							
Beloit:							
Local	91	36.66	30.08	24	17.5	13	11.98
Proportional	91	28	22.5	19	13.5	10	11
Madison:							
Local	130	38.5	32.5	25.5	17.5	14	15.5
Proportional	130	32	26.5	22	15.5	12.5	12.5
From Milwaukee to—							
Beloit:							
Local	81	29.3	24.1	19.5	14.3	10	11.2
Proportional	81	28	22.5	19	13.5	10	11
Madison:							
Local	82	35.5	29.5	24	17.5	14	14
Proportional	82	32	26.5	22	15.5	12.5	12.5

It thus appears that the through rates are lower than the full combination of local rates on Chicago or Milwaukee. In showing through charges for the first six classes from New York to Beloit and Madison complainants have matched the first four classes of the official classification against the first four classes of the western classification, fifth class of the official against class A of the western, and sixth class of the official against fifth class of the western. See *Interior Iowa Cities Case*, 28 I. C. C., 64, 72. The resulting charges and the distances are shown in the following table, together with

the rates proposed by complainants and the reductions which those rates would make necessary:

From New York to—	Miles.	1	2	3	4	5-A	6-5
Beloit:							
Present	1,003	106.8	90.8	71.5	50.3	42.5	[illegible]
Proposed [1]	1,003	88.3	76.5	58.8	41.2	35.3	[illegible]
Reduction	....	18.5	14.3	12.7	9.1	7.2	6.8
Madison:							
Present	1,042	110.8	94.8	74.5	52.3	44	38.8
Proposed	1,042	90.6	78.5	60.4	42.3	36.2	30.2
Reduction	....	20.2	16.3	14.1	10	7.8	8.6

[1] These are the present rates from New York to Rockford, a 112 per cent point. The distance from New York to Rockford is 997 miles; from Rockford to Beloit, 18 miles.

The rates thus proposed from New York to Madison and Stoughton are somewhat lower than the rates to the Mississippi River crossings, such as Dubuque and Clinton, which are stated in a foregoing paragraph. As evidence that the rates from trunk line territory to the southern Wisconsin cities are unreasonable, complainants rely chiefly upon such comparisons as have been shown with rates to the upper Mississippi River crossings and to points in Illinois. They have made a similar comparison in another form by showing the earnings in cents per ton-mile which accrue from the rates to Madison, Clinton, and other cities. This evidence is shown in part in the following table:

From New York to—	Miles.	Earnings in cents per ton-mile.					
		1	2	3	4	5	6
Madison	1,042	2.12	1.81	1.43	1.00	0.84	[illegible]
Clinton, Iowa	1,050	1.75	1.52	1.17	.82	.70	[illegible]
Dubuque, Iowa	1,079	1.70	1.48	1.13	.80	.68	.57
Muscatine, Iowa	1,119	1.64	1.42	1.09	.77	.66	.55
St. Louis, Mo	1,065	1.73	1.50	1.15	.80	[illegible]	.57
Galena, Ill	1,071	1.72	1.49	1.14	.80	.68	.57
Freeport, Ill	1,026	1.75	1.51	1.16	.81	.70	[illegible]

It is pointed out that the earnings in cents per ton-mile under the second-class rate to Madison are higher than under the first-class rate to Clinton and to St. Louis, although the distance to Madison is somewhat less than to those cities.

In the following tables are shown the rates for the first five classes from Buffalo and Cincinnati to Beloit and Madison; the joint through rates which were canceled July 1, 1916; the Chicago combination of local rates; the Milwaukee combination of local rates; the combination of the local rates to Chicago or Milwaukee, plus the proportional rates applicable via either of those gateways; the joint through rates

asked by complainants; and the reductions which would be required by the last-named rates from the lowest combination:

	1	2	3	4	5
From Buffalo to Beloit.					
Joint through rates[1]	91.3	76	57.5	40.1	34.4
Chicago local combination	83.96	71.08	55.5	39.6	31.9
Milwaukee local combination	76.6	65.1	51	36.4	28.9
Milwaukee proportional combination	75.3	63.5	50.5	35.6	28.9
Joint through rates asked by complainants	56.5	49	37.6	26.4	22.6
Reduction asked from lowest combination	18.8	14.5	12.9	9.2	6.3
From Buffalo to Madison:					
Joint through rates[1]	91.3	76	57.5	40.1	34.4
Chicago local combination	85.8	74.5	57	39.6	32.9
Milwaukee local combination	82.8	70.5	55.5	39.6	32.9
Milwaukee proportional combination	79.3	67.5	53.5	37.6	31.4
Joint through rates asked by complainants	62.3	54	41.4	28.8	25.1
Reduction asked from lowest combination	17	13.5	12.1	8.8	6.3
From Cincinnati to Beloit:					
Joint through rates[1]	88.3	73	54.5	37.1	31.4
Chicago local combination	78.66	65.78	50.3	35.4	28.8
Milwaukee local combination	77.6	66.1	50	35.3	27.9
Milwaukee proportional combination	76.3	63.5	49.5	34.5	27.9
Joint through rates asked by complainants	49.3	41.8	32.5	22.5	19.3
Reduction asked from lowest combination	27	21.7	17	12	8.6
From Cincinnati to Madison:					
Joint through rates[1]	88.3	73	54.5	37.1	31.4
Chicago local combination	80.5	69.2	51.8	35.4	29.8
Milwaukee local combination	83.8	70	54.5	38.5	31.9
Milwaukee proportional combination	80.3	67.5	52.5	36.5	30.4
Joint through rates asked by complainants	51.1	43.7	33.8	23.4	20.3
Reduction asked from lowest combination	29.2	23.8	18.7	13.1	10.1

[1] The Winona basis, canceled as to Beloit and Madison, July 1, 1916.

Milwaukee combination is met via Chicago in all instances.

Complainants point out that the distances are less from Chicago to Madison than to the upper Mississippi River crossings and that Chicago is the principal gateway for traffic to those destinations. They also show that there are no eastern lines whose rails extend to Rockford, Freeport, Clinton, Dubuque, Savanna, or Burlington, or the southern Wisconsin cities. In reaching the west bank of the Mississippi River bridges must be crossed, an element of cost not present in transportation to Wisconsin cities. The distances by car-ferry routes to Madison and Watertown from New York are less than the distances to Rockford by those routes or through Chicago. Beloit, Janesville, and Stoughton are substantially the same distance from New York by car-ferry lines as is Rockford through Chicago. The influence of the car-ferry lines will be discussed in a subsequent part of this report.

Complainants offer in evidence "as a test of the relative location of the complaining cities" a comparison of local rates and distances from Chicago to the southern Wisconsin cities and to points in Illi-

nois and Iowa. Certain state scales are also shown. We reproduce in part this comparison in the following table:

From Chicago to—	Miles.	1	2	3	4	5
Beloit	91	36.6	30.08	24	17.5	13
Leaf River, Ill	97	30.8	24.8	19.9	15	13
Madison	130	38.5	33.5	26.5	17.5	14
Savanna, Ill	138	35.2	27.8	21.7	17.4	14
Fulton, Iowa	136	37.1	29.2	22.8	18.3	14.7
Illinois scale	130	34.6	27.1	21.2	16.8	12.5
Wisconsin scale	130	43	34	26.5	21	17
Clinton, Iowa	137.5	39.4	31.2	24.3	19.6	15.6
Dubuque, Iowa	172.2	46.5	32.2	26	20.1	16.1

The evidence offered by complainant with respect to westbound rates from trunk line territory to the southern Wisconsin cities applies to eastbound rates as well. There are joint through rates eastbound from cities with which comparison is made, such as Rockford and Dubuque, while from the complaining cities the lowest combination of intermediate rates, local or proportional, apply. To New York the rates eastbound from those cities are the same as westbound. In the case of other points of destination, such as Boston and Philadelphia, the rates are somewhat different, due to long-established differences in the factors east of Chicago.

To show that the rates under attack are unduly discriminatory and prejudicial to the complaining cities, complainants rely upon the rate comparisons to which we have referred and upon testimony showing competition between manufacturers, jobbers, and merchants located in those cities with similar business establishments located at points in Illinois, Iowa, and eastern Wisconsin. Upon this phase of the case a large number of witnesses were heard, and evidence was taken at great length. All complained of the relation of rates under attack as inequitable and injurious. The probative value of their testimony was not uniform. In some instances it was shown that raw materials were drawn from central freight association territory for manufacture in Wisconsin and reshipped to that territory in the form of finished products, to be sold in competition with the products of plants located much nearer the sources of supply. It was shown that in some instances Wisconsin manufacturers were able to overcome these disadvantages of location, and this fact is emphasized by defendants. In other instances the competition with manufacturers located in central freight association territory is met with difficulty. It would serve no useful purpose to analyze or make detailed reference to the evidence relating to these business conditions. After considering all the criticisms made of this evidence by defendants, the essential fact remains that active competition has been shown between the southern Wisconsin cities and those cities in adjacent territory with which rate comparisons have been made.

In this connection it is important to refer, however, to the relation of certain commodity rates which the complaint of the southern Wisconsin cities places in issue. Wisconsin manufactures destined to points east of Chicago do not move to the gateways, as a general rule, on class rates. The carriers have established commodity rates to the rate-breaking points upon which such traffic moves. So numerous and widely applied are commodity rates in Wisconsin that they carry by far the greater part of the tonnage of that state. It is stated that for a given period only 5.8 per cent of the tonnage of the North Western in Wisconsin moved on class rates. We may here illustrate the application of these commodity rates. One of the chief witnesses for complainants represented a large manufacturer of gasoline engines at Beloit. From Beloit to New York the through carload rate on gasoline engines is 40 cents, composed of a commodity rate of 8.5 cents to Chicago or Milwaukee and 31.5 cents, the fifth-class rate, beyond. The same rate applies from Madison, where another corporation manufactures similar engines. These products are shipped to New York in competition with manufacturers located at Rockford, Freeport, Chicago, Milwaukee, and other points in prorating territory from which the fifth-class rates apply. With the combination through commodity rate of 40 cents is thus compared the rate from Rockford, 35.3 cents; from Freeport, 35.9 cents; from Chicago and Milwaukee, 31.5 cents.

There are no joint through commodity rates from trunk line territory to the southern Wisconsin cities, except those on sugar, coffee, and one or two other articles. There are few eastbound. Of the rates on sugar and coffee from New York to Madison, which are made differentially over the rates from New Orleans, counsel for complainants says that they "come nearer being on a fair basis than any rates probably that are involved in this case." From New York to Chicago the rate on sugar is 27.3 cents, to Dubuque 32.8 cents, to Madison 34.3 cents; on coffee to Chicago 31.5 cents, to Dubuque 36.9 cents, to Madison 41.5 cents. There are joint through commodity rates on a number of commodities to and from those points with which the manufacturers or jobbers at the southern Wisconsin cities compete.

With reference to traffic from and to central freight association territory, the situation is similar to that which we have described with reference to trunk line territory. There are few joint through commodity rates. The carriers, however, have established numerous commodity rates for the transportation west of Chicago and Milwaukee, which are used in connection with the rates applicable east of those gateways, while to such points as Rockford and Dubuque joint through rates are in effect. A comparison emphasized by com-

plainants is that of rates on iron and steel articles from Pittsburgh. On those articles, in carloads, the rate to Dubuque is 25.1 cents, to Rockford 22.6 cents, to Freeport 22.2 cents. These are the joint through fifth-class rates. To Madison, Watertown, and Stoughton the rate is 24.2 cents, to Beloit and Janesville 23.9 cents. These are joint through rates equal to the combination of the fifth-class rate from Pittsburgh to Chicago, 18.9 cents, and commodity rates of 5.3 cents and 5 cents, respectively, beyond. Iron and steel articles are received in large volume from Pittsburgh. Prices base on the rates from that point, although the articles may be purchased at other points in central freight association territory.

Testimony was offered at considerable length in behalf of wholesale grocers located at the southern Wisconsin cities. They complain that the rate relationships under attack unduly prefer the larger distributing houses at Chicago and Milwaukee as well as the jobbers located in cities in northern Illinois and on the Mississippi River in Iowa. The rates on sugar and coffee from New York have been stated. Many comparisons were made of so-called "jobbing combinations," that is, carload rates inbound to the complaining cities and less-than-carload rates outbound to near-by points of destination, as contrasted with similar combinations on Chicago and other points. Of these the rates on canned goods from Baltimore, Pittsburgh, and Indianapolis were taken as representative. Complainants do not contend that the carriers should be required to establish inbound and outbound rates which will equalize the aggregate charges through the various jobbing centers. They use these comparisons in furtherance of their desire for reasonable inbound rates. Thus, in the words of complainants' counsel:

> When obtained, those inbound rates plus the present proper outbound rates will produce reasonable jobbing combinations, which will be fairly equitable to the various jobbing points.

In view of that purpose, it becomes unnecessary to reproduce here complainants' comparisons of jobbing combinations. With comparisons of class rates already before us, it is sufficient to state that canned goods from Baltimore, Pittsburgh, Indianapolis, and other points move to Chicago, Milwaukee, Rockford, Freeport, or Dubuque at fifth-class rates and to the complaining cities on the combination of fifth class to Chicago or Milwaukee plus the fifth-class proportional or local rate beyond.

The carriers' defense in the case of the southern Wisconsin cities is in part an explanation of the conditions controlling rates to interior Wisconsin cities as distinguished from those operative in the territories with which rate comparisons have been made by complainants. This explanation is common to all of the cases here con-

sidered and has been discussed in connection with complainants' proposal to extend prorating territory.

The carriers emphasize the fact that official classification territory does not extend to the southern Wisconsin cities, and assert that the normal basis of rate making from that territory to western classification territory is the lowest combination of rates on the rate-breaking points. They further urge that the same logic which would require 115 per cent of New York-Chicago rates at Madison would apply to St. Paul, and would result in a substantial reduction in the rates to that city. Thus the St. Paul rates, now approximately 150 per cent of the New York-Chicago rates, would be reduced to 144 per cent. The history of the twin cities rates is reviewed in the *Burnham-Hanna-Munger Case*, 14 I. C. C., 299. At the time that report was issued these rates were made by combination of the rates to Chicago or other gateways plus a 40-cent scale of proportional rates beyond. Since January 2, 1901, they have been published as joint through rates, but are divided so as to give the trunk lines their full locals to the established gateways. The carriers urge that although the westbound class rates from trunk line territory to St. Paul are joint through rates, subject to the official classification, this adjustment was forced by the Canadian lines and does not form a reason for establishing joint through rates to Wisconsin cities. It is also the position of the trunk lines that the rates from eastern territory to Chicago and other 100 per cent points are quite as low as the carriers should be asked to receive for transportation to those points; that they are the lowest scale of rates in the United States, effective through a territory of very high traffic density, and should not be projected on a mileage basis beyond the limits of official classification territory.

Upon the assumption that the local rates to 100 per cent points are reasonable for that part of the transportation which they cover, the western lines have shown what the balance of the joint rates asked for by complainants would be for the transportation west of the gateways. This evidence is reproduced in part in the following table:

	1	2	3	4	5	6
From New York to Madison:						
115 per cent basis [1]	90.6	78.5	60.4	42.3	36.2	30.2
100 per cent to Chicago	78.8	68.3	52.5	36.8	31.5	26.3
Proportion to western lines for distance Chicago to Madison, 130 miles	11.8	10.2	7.9	5.5	4.7	3.9
From New York to Beloit:						
112 per cent [2]	88.3	76.5	58.8	41.2	35.3	29.5
100 per cent to Chicago	78.8	68.3	52.5	36.8	31.5	26.3
Proportion to western lines for distance Chicago to Beloit, 91 miles	9.5	8.2	6.3	4.4	3.8	3.2

[1] Percentage asked by complainants. If computed on short-line distances, 912 miles to Chicago, 1,042 miles to Madison, via Chicago, the percentage basis would be 114 per cent.

[2] Percentage asked by complainants. If computed on short-line distances, 912 miles to Chicago. 1,003 miles to Beloit, via Chicago, the percentage basis would be 110 per cent.

Upon the further assumption that the establishment of the prorating basis at the southern Wisconsin cities might require the same basis to be carried to La Crosse, St. Paul, and other cities, the following comparisons, among others, were made:

	1	2	3	4	5	6
From New York to La Crosse:						
129 per cent[1]	101.7	88.1	67.7	47.5	40.6	33.9
100 per cent to Chicago	78.8	68.3	52.5	36.8	31.5	26.3
Resulting proportion to western lines	22.9	19.8	15.2	10.7	9.1	7.6
Present proportion to western lines	40	34	26	18	16	13
From New York to St. Paul:						
144 per cent[2]	113.5	98.3	75.6	53	45.4	37.9
100 per cent to Chicago	78.8	68.3	52.5	36.8	31.5	26.3
Resulting proportion to western lines	34.7	30	23.1	16.2	13.9	11.6
Present proportion to western lines	40	34	26	18	16	13

[1] Based on mileage to Chicago, 912 miles; to La Crosse via Chicago, 1,175 miles.
[2] Based on mileage to Chicago, 912 miles; to St. Paul via Chicago, 1,310 miles.

In the view of the carriers the present proportional rates applying west of Chicago and Milwaukee are a concession from the basis which might normally be established, namely, the full local rates. They point to the decision of the Commission in the *Interior Iowa Cities Case*, *supra*, in which joint through rates to interior Iowa, subject to the official classification, were sought, as a precedent for constructing rates from the natural gateways instead of constructing them from a point on the rim of a circuitous route, such as Columbus Junction, Iowa, which is intermediate to Burlington by the line of the Rock Island through Davenport. The effect of establishing proportional rates to the southern Wisconsin cities from Chicago and Milwaukee by the use of the local rates from the outer rim of the Milwaukee group is to give the North Western for a service of 130 miles, Chicago to Madison, the local rate for 62.4 miles, the distance from Waukesha, and to give that line for a service of 91 miles, Chicago to Beloit, the local rate for 41.9 miles, the distance from Burlington.

The carriers make comparison of the rates made on combination to the southern Wisconsin cities with rates to Jefferson City, Moberly, and Mexico, Mo., which are approximately the same distance from the rate-basing points, St. Louis, Hannibal, Mo., and Quincy, Ill., as are the southern Wisconsin cities from Chicago. Jefferson City is 125 miles from St. Louis; Mexico is 50 miles from Louisiana, 116 miles from St. Louis, while Moberly is 70 miles from Hannibal and 148 miles from St. Louis. This comparison is in part as follows:

From New York to—	Miles.	1	2	3	4	5
Jefferson City	1,178	137.2	115.9	89.4	65.6	54.4
Mexico	1,169	129.2	109.9	85.9	61.6	50.4
Moberly	1,188	126.2	107.9	84.4	60.1	49.4
Madison	1,042	110.8	94.8	74.5	52.3	38.8
Beloit	1,003	106.8	90.8	71.5	50.3	36.3
Watertown	1,042	101.3	87.8	68.5	48.8	35.3

Comparison is also made with rates from New York to Cedar Rapids, Iowa, which are the following:

From New York to—	Miles.	1	2	3	4	5
Cedar Rapids	1,130	115	99.6	76.3	54.5	45.2

The carriers offer similar comparisons between rates made on combination from points in central freight association territory to the southern Wisconsin cities and to points south of the Ohio River. Bowling Green, Ky., is 117 miles from Louisville, Ky., Junction City, Ky., is 121 miles from Cincinnati. We reproduce here two of these comparisons:

From—	Miles.	1	2	3	4	5
Pittsburgh to—						
Madison	508	81.3	69.5	55.5	39.6	33.4
Bowling Green	537	82	72	58	44	36
Cincinnati to Watertown	415	70	58.2	45.3	31.4	26.8
Cleveland to Junction City	383	78.9	67.6	54.2	39.8	34.7

Similar differences are shown in comparisons with rates from points in central freight association territory to points in Missouri. A closer relation is shown in comparisons with rates to points in Iowa. In some instances, however, they are substantially higher than rates for substantially the same distances to the southern Wisconsin cities.

Reference has been made to the fact that the carriers have established numerous commodity rates for application between Wisconsin points and the eastern traffic gateways. In this connection rates on iron and steel articles were stated. The carriers assert that the rates on these articles are relatively low when compared with rates on the same articles for movements in official classification territory. Among the comparisons thus made are the following:

	Miles.	Rate on iron and steel articles.		Miles.	Rate on iron and steel articles.
Chicago to Beloit	91	6	Chicago to Madison	130	6.3
Cleveland to Youngstown	67	5.3	Cleveland to Toledo	113	9.5
Cleveland to Fremont	83	8.4	Cleveland to Pittsburgh	130	10.5
Philadelphia to Bethlehem	57	7.9	Pittsburgh to Canton	101	9.5
Philadelphia to Reading	60	6.3	Pittsburgh to Massillon	109	9.5
Chicago to South Bend	86	9.5	Philadelphia to Steelton	101	7.9
Pittsburgh to Dennison	90	9.5			

A list of commodities in general use is shown together with rates to which they would be subject under the western classification and the commodity rates under which they actually move. Thus packing-house products are rated fifth class in the western classification. The fifth-class rate from Chicago to Beloit is 13 cents, but the movement is under a commodity rate of 8.4 cents. These comparisons, which do not require extended statement, show many commodity rates substantially lower than the level of the class basis.

The carriers assert that the traffic density of their lines between Chicago and the Mississippi River through the state of Illinois is substantially greater than that of their Wisconsin lines. Comparisons are also made with lines operating in official classification territory. These comparisons for the year ended June 30, 1914, as offered by the North Western, are reproduced in part in the following table:

	Revenue tons per mile of road.	Tons of freight per train-mile.	Freight revenue per mile of road.	Average haul per ton in miles.
C. & N. W. system[1]	771,930	347.6	$6,689.64	143
C. & N. W. in Illinois	1,765,575	481.1	14,237.24	[2] 73
C. & N. W. in Wisconsin	961,965	399.5	7,917.46	[2] 85
P. R. R	5,430,286	729.9	31,407.92	164
P. Co	4,448,369	588.1	25,518.34	77.3
New York Central	2,788,075	508.3	17,449.23	203
Lake Shore	3,250,266	681.4	18,563.97	156
Baltimore & Ohio	2,997,966	619.7	16,922.86	193.5

[1] Does not include the Chicago, St. Paul, Minneapolis & Omaha.
[2] Interstate.

The through freight traffic of the North Western which was formerly carried via Beloit, Janesville, and Madison has been diverted within the last two or three years to the line extending from Chicago through Milwaukee and Wyeville, Wis., to the twin cities for the reason, defendants assert, that heavier grades are encountered via Madison than via Wyeville. Complainants allege that the Madison route has largely been given over to fast through passenger service and ask that this fact be considered in connection with defendants' showing of freight traffic density. In this connection the traffic

densities of several North Western lines in Wisconsin were shown, together with other related statistics. It is unnecessary to reproduce this evidence in detail. The gross tons per mile of road over these lines were as follows: Between Janesville and Winona, 116,680; Milwaukee and Madison, 143,774; Janesville and Chicago, 258,417; Madison and Belvidere, 286,139; Milwaukee and Sparta, 1,083,896.

In behalf of the Milwaukee, density of westbound traffic figures were offered for movements during July, 1915. These are in part as follows: Chicago to Madison, ton-miles per mile of road, 230,110; Chicago to Stoughton, 241,170; Chicago to Janesville, 268,045; Chicago to Beloit, 286,805; Chicago to Freeport, 326,350; Chicago to Watertown, 569,529; Chicago to Savanna, Ill., 491,117.

The carriers offered statistics from the federal census report of 1910 intended to show that the development of the manufacturing industry in the southern Wisconsin cities during the decade 1899–1909 compared favorably with that of Rockford and Freeport. From this evidence the further inference is drawn that the measure and relation of rates in issue have not operated to the detriment of the complaining cities. These statistics have reference to population, value of manufactured products, capital investment, salaries, wages, cost of materials, and other items. Except in population, Freeport showed the greatest development of the cities compared. The per cent of increase in value of manufactured products, 1909 over 1899, for Rockford was 102, for Freeport 188, for Beloit 110, for Janesville 62, for Madison 103.

THE CENTRAL WISCONSIN CITIES.

Much of the evidence offered for and against the complaints in the case of the central Wisconsin cities is similar to that which we have reviewed in connection with the case of the southern Wisconsin cities. This is true in part of complainants' evidence; it is particularly true of defendants' evidence. Reference to a large part of the evidence in this case, therefore, may be properly omitted.

There are certain differences between these cases, however, which should be noted. The complaints of the central Wisconsin cities do not attack commodity rates. With respect to this fact the point is made by complainants that if the class rates which they propose are found to be reasonable and are published they will be lower than certain commodity rates now in effect. An examination of evidence shows that this would be true as to certain commodities, but not as to others. But in any event a reduction of a class rate below the level of a rate upon a particular commodity would not put in issue the reasonableness of that commodity rate if not attacked in the complaint.

The question of commodity rates suggests a further point of difference between this case and that of the southern Wisconsin cities. It has already been noted that products manufactured in Wisconsin move to the lake port gateways largely on commodity rates. It is frankly stated that the larger manufacturers located in the territory of the complaining cities have not supported the complainants in this case. The attack upon the class-rate structure now before us is chiefly made in behalf of "jobbers and smaller manufacturers." Not all of the cities on behalf of which complaint was filed supported the allegations by evidence other than the rate comparisons filed in their behalf. No testimony was offered by shippers located in the Chippewa Valley group.

A further important difference relates to the issue of discrimination. The complaint in this case, as filed, predicated its charge of unjust discrimination and undue prejudice chiefly upon the relation of the rates under attack with those in effect to and from points in prorating territory, such as cities in Illinois and on the Mississippi River. At the hearing the complaint was amended, without objection, so as to include an allegation of undue preference to Chicago, Milwaukee, Sheboygan, Manitowoc, Kewaunee, and Green Bay. These cities, except Green Bay, are 100 per cent points. Complainants' rate comparisons as offered in evidence relate almost wholly to the rates from and to cities in northern Illinois and on the Mississippi River in Illinois, Iowa, and Missouri. Unlike the case of the southern Wisconsin cities the record in this case is devoid of any evidence of competition between the complaining cities and such cities as Rockford, Freeport, and Dubuque or other cities in prorating territory except the lake ports. There is a further difference in that complainants in this case seek an order reducing rates by the car-ferry routes only. They would leave to the carriers the question of meeting the competition thus created by corresponding reductions via Chicago.

(1) To the central Wisconsin cities, with the exception of Eau Claire, Chippewa Falls, and Rhinelander, there are no joint through class rates in effect from trunk line territory. To these cities other than those named, the through rates are made on the combination of the local rates to Chicago, Milwaukee, or Manitowoc, subject to the official classification; and either local or proportional rates, subject to the western classification, beyond. These proportional rates, as in the case of the southern Wisconsin cities, are the local rates from the nearest 100 per cent point.

To Eau Claire, Chippewa Falls, and Rhinelander the rates to St. Paul, as above described, are applied as maxima.

From the central Wisconsin cities to points in trunk line territory the through class rates are made on the same principle as applies with respect to westbound rates, and this is true of Eau Claire, Chippewa Falls, and Rhinelander, which take the full combination of intermediate rates eastbound.

It has been pointed out that, effective July 1, 1916, the joint through rates from central freight association territory to a large part of the state of Wisconsin were canceled. That part of the state thus affected lies south and east of the line, shown on the accompanying map, drawn from Escanaba to the southwestern corner of the state. It includes all of the southern Wisconsin cities and the eastern Wisconsin towns. It also includes all of the Fox River Valley group, part but not all of the Wisconsin River Valley group, none of the Chippewa Valley group. Thus from central freight association territory to Oshkosh class rates are now made on the lowest combination, as in the case of eastbound rates. This is true of Stevens Point but not of other cities in the Wisconsin River Valley group. Marshfield, Grand Rapids, and Merrillan are in what remains of the Winona group. Other cities of the Wisconsin River Valley group, such as Wausau, and all of the cities of the Chippewa Valley group take St. Paul rates.

(2) The central Wisconsin cities ask an extension of prorating territory which will accord to those cities joint through class rates to and from trunk line territory made upon the following percentages of the New York-Chicago base rates: The Fox River Valley group, 110 per cent; the Wisconsin River Valley group, except Rhinelander, 117 per cent; Rhinelander, 120 per cent; the Chippewa Valley group, except Menomonie, 122 per cent; Menomonie, an equitable arbitrary over 122 per cent. At the hearing it was suggested in behalf of the Chippewa Valley group that with the purpose of avoiding a reduction of St. Paul rates, those cities might reasonably take a basis of 130 per cent. As the basis of reasonable joint through class rates from and to central freight association territory the central Wisconsin cities suggest that such rates should not exceed the rates between that territory and the 100 per cent points by more than the rates asked for as to New York exceed the rates to the 100 per cent points. This principle is wholly different from that suggested by the southern Wisconsin cities and may be briefly illustrated. The first-class rate from New York to Milwaukee is 78.8 cents; the proposed rate to Oshkosh, 110 per cent, 86.7 cents. The difference is 7.9 cents. This, according to complainants' theory, is the maximum difference by which the first-class rate from any point in central freight association territory to Oshkosh should exceed the rate from the same point to Milwaukee.

The practical effect of this theory would be the establishment of proportional class rates applicable to traffic from and to central freight association territory materially lower than those now in effect.

(3) Taking Oshkosh and Wausau as representative of the central Wisconsin cities, the present and proposed rates from and to New York for the first five classes are shown in the following table:

From New York to—	1	2	3	4	5
Oshkosh (996 miles):					
Present	106.8	90.8	71.5	50.3	42.5
Proposed	86.7	75.1	57.8	40.5	34.7
Reduction	20.1	15.7	13.7	9.8	7.8
Wausau (1,077 miles):					
Present	121.8	102.3	79	57.8	47.5
Proposed	92.2	79.9	61.4	43.1	36.9
Reduction	29.6	22.4	17.6	14.7	10.6
Eau Claire (1,156 miles):					
Present	118.8	102.3	78.5	54.8	47.5
Proposed	96.1	83.3	64.1	44.9	38.4
Reduction	22.7	19	14.4	9.9	9.1

The distance from New York to Milwaukee is 916 miles, to Manitowoc 944 miles; from Milwaukee to Oshkosh 80 miles, to Eau Claire 240 miles; from Manitowoc to Oshkosh 57 miles.

The rates to Oshkosh and Wausau, shown above, are the local rates to the 100 per cent points plus proportional rates beyond. They are applicable in both directions. The rates to Eau Claire are those applicable to St. Paul and apply westbound only. On eastbound traffic the class rates, made upon the combination of proportional rates to the 100 per cent points plus the local rates beyond, are the following:

From Eau Claire to New York.	1	2	3	4	5
Eau Claire to Manitowoc	53.5	45	35.5	25	20
Manitowoc to New York	78.8	68.3	52.5	36.8	31.5
Through rates	132.3	113.3	88	61.8	51.5
Proposed	96.1	83.3	64.1	44.9	38.4
Reduction	36.2	30	23.9	16.9	13.1

Complainants compare the rates from and to trunk line territory under attack with rates from that territory to the 100 per cent points and to points in Illinois, Iowa, and Missouri. Thus the distances and rates to Oshkosh are compared with those to Clinton, Iowa. Similarly, Wausau is compared with Hannibal, Mo., and Eau Claire with Louisiana, Mo. The distance from New York to Clinton

is 1,050 miles, to Hannibal 1,118 miles, to Louisiana 1,144 miles. The rates from New York to those three cities are the following:

Classes	1	2	3	4	5
Rates	92.2	79.9	61.4	43.1	36.9

Comparison is also made by complainants of rates and distances from New York to Prairie du Chien, Wis., made on the Milwaukee combination with the rates to numerous points in Iowa made on the Mississippi River combination. The purpose of these comparisons is to show the greater distances to Iowa points reached by approximately the same rates as to Prairie du Chien. We reproduce one of these comparisons in the following table:

From New York to—	Miles.	1	2	3	4	5
Prairie du Chien, Wis.	[1] 1,109.7	126.3	107.3	82.5	59.8	49.5
Charles City, Iowa	1,235	125.4	106.7	81.6	59.1	48.9

[1] Via Milwaukee.

In this connection it is urged by defendants that if the rates proposed by complainants should be prescribed and the eastern lines should receive their local rates to the gateways the balance to the western lines would be wholly insufficient for the service which they perform. In the following tables are shown complainants' proposed rates, the rates to the 100 per cent gateways, the differences between those rates, and certain state rates with which these differences are compared for similar distances:

From New York to—	Miles.	1	2	3	4	5	6
Oshkosh (proposed)		86.7	75.1	57.8	40.5	34.7	28.9
Manitowoc		78.8	68.3	52.5	36.8	31.5	26.3
Difference	[1] 62	7.9	6.8	5.3	3.7	3.2	2.6
Iowa distance rates	65	21.2	18	14.1	10.6	7.4	7.6
Minnesota distance rates	65	23.8	19.5	15.8	11.9	9.5	10.7
Illinois distance rates	65	23.9	22.2	18.9	13	10.4	10.2
Wausau (proposed)		92.2	79.9	61.4	43.1	36.9	30.8
Manitowoc		78.8	68.3	52.5	36.8	31.5	26.3
Difference	[2] 130	13.4	11.6	8.9	6.3	5.4	4.5
Iowa distance rates	130	26.8	23.3	18.1	14	10.1	11.1
Minnesota distance rates	130	36.5	30.4	24.2	18.2	14.6	16.4
Illinois distance rates	130	34.6	27.1	21.3	16.8	13.5	12.9

[1] From Manitowoc to Oshkosh. [2] From Manitowoc to Wausau.

Defendants have compared rates and distances from New York to four points in the Fox River group, Oshkosh, Fond du Lac, Neenah, and Appleton, with rates and distances to points in Iowa and Missouri. These comparisons are in part as follows:

From New York to—	Miles.	Class 1 rate.		Class 2 rate.		Class 3 rate.		Class 4 rate.		Class 5 rate.	
		In cents.	In mills per ton-mile.	In cents.	In mills per ton-mile.	In cents.	In mills per ton-mile.	In cents.	In mills per ton-mile.	In cents.	In mills per ton-mile.
Fox River points	[1] 999	106.8	21.3	90.8	18.2	71.5	14.4	50.3	10.1	42.9	8.4
Cedar Rapids, Iowa	1,130	115	20.3	98.6	17.4	76.3	13.5	54.5	9.6	45.2	8
Norway, Iowa	1,146	118.2	20.6	102.3	17.8	78.4	13.6	56.1	9.7	46.3	8
Mexico, Mo.	1,169	129.2	22.1	109.9	18.8	85.9	14.7	61.6	10.5	50.4	8.6
Moberly, Mo.	1,188	126.2	21.3	107.9	18.1	84.4	14.2	60.1	10.1	49.4	8.3

[1] Based on 916 miles to Milwaukee, the gateway via which the short-line distance figures, and 83 miles he average distance of the four named points from that gateway.

Comparisons are also made between rates from New York to Wausau, Grand Rapids, and Marshfield, on the one hand, and to Ogden, Iowa, Kansas City and Jefferson City, Mo., on the other; and also as between rates to Eau Claire and Chippewa Falls and to Kansas City and Denison, Iowa.

Defendants also make comparison of the local rates applicable between Chicago, Milwaukee, Manitowoc, and Oshkosh with the proportional rates in effect between Milwaukee, Manitowoc, and the same point. This comparison for the first five classes is as follows:

Between Oshkosh and—	Local rates.						Proportional rates.				
	Miles.	1	2	3	4	5	1	2	3	4	5
Chicago	165	43	36	29	20	15	28	22.5	19	13.5	11
Milwaukee	80	35	29.5	24	16	12.5					
Manitowoc	62	32	26.5	21	15	12					

Defendants point out that there are cities in Michigan which now take higher rates than those proposed as reasonable for the complaining cities. Such, for example, is Frankfort, a lake port intermediate to Kewaunee and other Wisconsin points by the line of the Ann Arbor, which takes 112 per cent of the New York-Chicago rates. The distance from New York to Frankfort is 906 miles. Cadillac, Mich., is a 110 per cent point and is 831 miles from New York.

With reference to rates from and to central freight association territory the numerous comparisons of record may be outlined by stating rates from Pittsburgh and Cincinnati to Oshkosh and Wausau. In the following table are shown the formerly effective joint through class rates from Pittsburgh to Oshkosh, the combination of

local rates on Manitowoc, the combination of proportional rates on Manitowoc, the joint through rates asked by complainants, and the reductions which these rates would require from the lowest combination:

From Pittsburgh to Oshkosh.	Miles.	1	2	3	4	5
Joint through rates [1]	611	91.3	76	57.5	40.1	34.4
Manitowoc local combination	....	80.3	68.5	54.5	39.1	32.9
Manitowoc proportional combination	....	75.3	63.5	50.5	35.6	29.9
Joint through rates asked by complainants	....	55.2	47.8	36.8	25.8	22.1
Reduction from lowest combination	....	20.1	15.7	13.7	9.8	7.8

[1] The Winona basis, canceled as to Oshkosh July 1, 1916.

The same rates are applied as proportional and local rates from Buffalo to Milwaukee or Manitowoc and as proportional rates from Pittsburgh. The local rates from Pittsburgh to the points named are 2 cents on each class higher than the proportional rates from Pittsburgh. The lowest combinations from Buffalo and Pittsburgh are therefore the same.

Complainants compare the rates from Pittsburgh to Oshkosh with those from Pittsburgh to Galesburg, Ill., while defendants' comparisons are with rates from Cleveland to Cedar Rapids and Belle Plaine, Iowa, from Columbus to Moberly, Mo., and from Buffalo to Bowling Green, Ky. These comparisons are shown in the following table:

	Miles.	1	2	3	4	5
Pittsburgh to Galesburg	611	60.3	51.5	39.4	27.3	22.6
Cleveland to Cedar Rapids	557	78.1	67.2	50.3	35.7	28.9
Cleveland to Belle Plaine	592	84.5	71.9	53.3	38.1	31.2
Columbus to Moberly	578	82.3	69.5	55	39.1	31.4
Buffalo to Bowling Green	672	83	72	58	44	36

Taking Wausau as representative of the Wisconsin River Valley group there are shown in the following table comparisons similar to those stated with reference to Oshkosh:

From Pittsburgh to Wausau.	Miles.	1	2	3	4	5
Joint through rates	701	97.3	81	61.5	43.1	37.4
Manitowoc local combination	....	92.3	77	60	45.1	38.9
Manitowoc proportional combination	....	90.3	75	58	43.1	36.9
Joint through rates asked by complainants	....	60.7	52.6	40.4	28.4	24.3
Reduction from lowest combination	....	29.6	22.4	17.6	14.7	12.6

In the following table are shown comparisons of rates from Cincinnati to Oshkosh similar to those shown with reference to rates from Pittsburgh:

From Cincinnati to Oshkosh.	Miles.	1	2	3	4	5
Joint through rates[1]	451	88.3	73	54.5	37.1	31.4
Manitowoc local combination	....	79.3	66.5	51.5	36	29.9
Manitowoc proportional combination	....	70	58.2	45.3	31.4	26.8
Joint through rates asked by complainants	....	49.9	42.5	31.6	21.6	19
Reduction from lowest combination	....	20.1	15.7	13.7	9.8	7.8

[1] The Winona basis, canceled as to Oshkosh July 1, 1916.

The differences between the local and the proportional rates from Manitowoc to Oshkosh have been stated. The proportional rates from Cincinnati to Manitowoc are lower than the local rates for that movement, for the first five classes, by the following:

Classes	1	2	3	4	5
Cents	6.3	5.3	4.2	3.1	2.1

These proportional rates are the local rates to Chicago, applied proportionally through the Wisconsin lake ports.

Complainants compare the rates from Cincinnati to Oshkosh with rates from Cincinnati to Dubuque, while defendants' comparisons are with rates from Cincinnati to Jefferson, Mo., from Defiance, Ohio, to Belle Plaine, Iowa, and from Cleveland to Junction City, Ky. These comparisons are shown in the following table:

	Miles.	1	2	3	4	5
Cincinnati to Dubuque	457	51.1	43.7	33.8	23.4	20.3
Cincinnati to Jefferson	464	88.1	72.2	54.8	40.9	33.3
Defiance to Belle Plaine	444	76.5	64.3	48.9	35.3	28.5
Cleveland to Junction City	383	78.9	67.6	54.2	39.8	34.7

Similar comparisons with reference to rates from Cincinnati to Wausau are shown in the following table:

From Cincinnati to Wausau.	Miles.	1	2	3	4	5
Joint through rates	550	93.3	77	57.5	40.1	34.4
Manitowoc local combination	....	91.3	75	56.5	42	35.9
Manitowoc proportional combination	....	85	69.7	52.8	38.9	33.8
Joint through rates asked by complainants	....	55.4	47.3	35.2	24.2	21.2
Reduction from lowest combination	....	29.6	22.4	17.6	14.7	12.6

With these rates complainants compare the rates from Cincinnati to Postville, Iowa, while for a similar distance defendants make comparison with rates from Toledo to Nevada, Iowa, from Defiance,

Ohio, to Boone, Iowa, from Columbus to Jefferson, Mo., and from Detroit to Corbin, Ky. These comparisons are as follows:

	Miles.	1	2	3	4	5
Cincinnati to Postville	549	67.5	57.2	42.7	30.6	24.6
Toledo to Nevada	561	87.1	71.7	54.6	40.4	32.9
Defiance to Boone	531	90.9	73.1	55.2	41.2	33.7
Columbus to Jefferson	555	93.3	77.5	60	44.6	36.4
Detroit to Corbin	444	101.4	87.7	72.7	50.3	51.7

Complainants compare rates from the Fox River group, Green Bay group and Milwaukee to points in Indiana and western Ohio. These comparisons may be illustrated by the rates to Logansport, Ind., which are the following:

To Logansport from—	1	2	3	4	5	6
Oshkosh	61.6	51.9	43.7	30.8	23.6	22
Green Bay	56.7	47.8	36.2	25.2	21	17.9
Milwaukee	33.6	29.4	24.7	16.8	12.6	11

Complainants make numerous other comparisons of the rates to the complaining cities with rates to points in Illinois and Iowa. These comparisons show substantial differences similar to those which appear in the foregoing tables with reference to rates from Pittsburgh and Cincinnati to Oshkosh and Wausau. It is unnecessary, therefore, that they be set forth here.

Revenue statistics of the North Western and the Milwaukee for the year ended June 30, 1915, taken from reports to this Commission and various state commissions, are a part of complainants' evidence. Those items to which special attention was called are shown in Tables A and B of the appendix to this report.

Complainants' witnesses in the central Wisconsin cities case were two wholesale grocers, located at Oshkosh and Stevens Point, respectively, the secretary of a farmers' association, a manufacturer of bottle wrappers and excelsior pads at Oshkosh, and three rate witnesses. The competition emphasized by the wholesale grocers is with Chicago, Milwaukee, and Manitowoc, and the relation of rates on canned goods was discussed at some length. The all-rail rate on that commodity in carloads from Baltimore to Stevens Point is 39.5, composed of a rate of 28.5 cents to Chicago or Milwaukee and 11 cents beyond. The rate of 11 cents is the fifth-class proportional rate and is not applicable to canned goods distributed locally from Milwaukee. When so shipped the local fourth-class rate of 21 cents less than carload applies. There is a lake-and-rail rate of 22 cents from Baltimore to Milwaukee. The grocery jobber at Stevens Point

received no canned goods in 1915 by the all-rail movement. He distributes to the east and south for a range of about 50 miles on an even basis with his competitors at the lake ports; to the north about 75 or 80 miles. Rhinelander was named as an illustrative point to the north. The witness pointed out that the lake-and-rail jobbing combination to Rhinelander on Milwaukee is 45 cents, on Stevens Point 56 cents. He has no competition with any Illinois cities except Chicago. He also distributes kraut received from Baltimore and in this trade meets the competition of that commodity manufactured in Milwaukee.

The Oshkosh wholesale grocer testified as to competition with Chicago, the lake ports of Wisconsin and interior points such as Wausau, Stevens Point, and Marshfield. He distributes groceries to the north of Oshkosh for distances of 50 to 75 miles before meeting material competition from those cities. In certain lines his distribution reaches as far north as Ashland, to the east about halfway to Milwaukee, to the south beyond Fond du Lac, to the west as far as Grand Rapids and Marshfield. It was testified that there are points 75 miles north of Oshkosh to which the local rates from Milwaukee are the same as from Oshkosh, and at those points the Milwaukee competition is met by shrinkage of profits.

The manufacturer of bottle wrappers and excelsior pads testified as to competition on excelsior pads with Sheboygan and described his selling territory as restricted to Wisconsin, Illinois north of a line from Chicago to St. Louis, with some sales in the latter city. The raw materials for bottle wrappers are drawn mostly from Ohio and Indiana, due to the fact that but little of the grade of paper used is manufactured in the Fox River Valley. The rate on this paper from Lockland, Ohio, a suburb of Cincinnati, to Oshkosh is 18.9 cents, to Sheboygan 11.4 cents. It was testified that bottle wrappers could not be shipped from Oshkosh into central freight association territory because of the relation of freight rates. There are manufacturers of the same product located at Dayton, Ohio, and Cincinnati, nearer the source of the raw materials. Assuming the discrimination complained of by this witness to have been established, no order could be made in this case. The rates on excelsior pads and bottle wrappers from Oshkosh to Chicago and Milwaukee are commodity rates and therefore not in issue, as complainants' counsel concedes.

THE INFLUENCE OF THE CAR-FERRY LINES.

The complainants in these cases have relied largely upon comparisons with rates applicable to adjacent territory in and near the state of Wisconsin. Such are the comparisons of rates to points in

northern Illinois, to the upper Mississippi River crossings, to the Wisconsin lake ports, to the Green Bay group, and to St. Paul. The defendants are unwilling to concede that any of these rates may properly be made the measure of rates to interior Wisconsin points for the reason that they are controlled by competitive conditions. Thus the extension of prorating territory into northern Illinois and to the upper Mississippi River crossings is ascribed to competition, for traffic transported from the east through Chicago, between the western lines and the eastern lines reaching that territory over their own rails; the establishment of the Wisconsin lake ports as 100 per cent points is explained as due to the desire of the car-ferry lines to share in through traffic with routes through the Chicago gateway; the rates applying across lake to and from the Green Bay group, made by differentials over the rates to and from the ports, are said to be due to the accessibility of Green Bay to transportation by water; and the proportional rates applying on eastern traffic to St. Paul were established to meet rates fixed by the Canadian lines which were themselves influenced by the lake-and-rail rates to Duluth. While not denying the fact of these competitive influences, counsel for the central Wisconsin cities urges that the interior cities of that state have not received the benefit of such influences, and that those cities have been "marooned" by holding their rates at a high level while the surrounding territory has had the benefit of water competition. The carriers with equal vigor insist that the present rates to and from interior Wisconsin do reflect the influences of water competition. As evidence of this they refer to the 100 per cent rates at the lake ports, without which they assert that the higher combinations via Chicago would be the normal basis, to the proportional rates from the nearest lake port or nearest point on the rim of a group to which 100 per cent rates are applied under the fourth section, and to the application of the St. Paul rates at intermediate points which would otherwise take a higher combination. But counsel for the complainants insists that the St. Paul rates should be graded back, that rate zones should be established across the state of Wisconsin, and that the prorating basis should not stop at the lake ports. It is asked that the stated percentages of New York-Chicago rates be required by order to be applied through the Wisconsin lake ports, leaving it to the carriers' judgment to meet that competition via the Chicago gateway or not, as they choose. This position was discussed at some length in the record, particularly in the testimony of the witness who gave the history of the building of the early lines of railroad in the state of Michigan, the development of the break-bulk boat and the later car-ferry service and the

establishment of the 100 per cent rates at the Wisconsin lake ports. Upon the general question of the possibility of rates lower across lake than via Chicago, and of handling traffic by car ferries, this witness expressed the following views:

In the development of through traffic the car-ferry operations across Lake Michigan have developed just as much westbound traffic as they have eastbound traffic, and it is very satisfactory to the railroads that operate car ferries, and they are not taking traffic from any of the existing trunk lines; they are just getting the overflow of traffic. * * *

* * * * * * *

The car-ferry routes are not independent in the origin of traffic they would move westbound; they are dependent upon connecting railroads from which connecting railroads this traffic largely originates, and those connecting railroads have their railroads through to Chicago, and in the handling of traffic where competitive gateways exist you can not encourage a preference through any gateway on through traffic; there will be a parity of conditions reached; it does not make any difference what they may be, where the territory may be, that parity of conditions is bound to be reached, but it is perfectly logical in the operation of these great transportation companies between the east and west, that through rates are adjusted through all gateways.

I have not been able to see any advantage, and, further, while we have dreamed on the Pere Marquette Railroad of our line from Toledo and Detroit as the great short distance between the northwest and the seaboard, and we have preached and we have pressed in the east for those advantages on account of mileage, because it was the shortest line between the northwest and the seaboard we could never get the advantage. It can not be obtained. There are too many in the market for this through traffic; that is the great prize of the transportation companies, the through traffic. Most of these railroads have got a capacity that is in excess of their local traffic, and they go outside to get this through traffic, and it is an enormous volume, because the surplus must move to the seaboard for its market that which grows in the west. Now the west is the consumer of the manufactured products in the central and Atlantic states, and that great surplus is the prize among all these roads, and one of them can not get the advantage over the other. We have been seeking the benefit of that advantage through Manitowoc or through Milwaukee. We can not get it. It is impossible. The parity will be reached some way or other, and no one route will have the advantage over another.

The witness expressed the opinion that the car-ferry lines would have an advantage in service over the Chicago gateway to the Fox River territory but could not handle the business of the entire state "with almost any facilities." He emphasized the growth of the state of Wisconsin, its diversity of traffic, and said:

We feel * * * in the state of Michigan a little envious of the magnificent railroad systems that take care of the state of Wisconsin, and we lay it—I take it, as a transportation man—to the magnificent facilities that those railroads have given that have made this state what it is. * * * We can not serve the state of Wisconsin through car ferries. We will take all we can get and we are getting all we can carry.

THE EASTERN WISCONSIN TOWNS.

This case is quite frankly stated to be an outgrowth of those which have been reviewed in the foregoing paragraphs. The evidence offered by complainants is comparatively brief, while that of defendants consists in large part of the testimony offered by their witnesses in the case of the central Wisconsin cities, made a part of this record by exhibits.

The rates in issue are made in the same manner as those of the Fox River group already described. Complainants ask that class rates between New York and these towns be made 104 per cent of the New York-Chicago rates. That this percentage would be reasonable seems to have been the general judgment of complainants' counsel, based upon the assumption that 110 per cent would be reasonable for the Fox River group. As to central freight association territory the same theory of reasonable differences over rates to the lake ports is urged as in the case of the central Wisconsin cities. Complainants do not show what the rates proposed by them would be in cents per 100 pounds, nor the reductions which these rates would make necessary from those now in effect.

The complaint charges in substance that the present relation of rates results in undue prejudice to the eastern Wisconsin towns and in undue preference to Milwaukee, Racine, Waukesha, Sheboygan, and Manitowoc. Stress was laid upon the unreasonableness of the joint through class rates from central freight association territory in that they exceeded the combination on the lake port gateways. These joint through rates were canceled as to all of the eastern Wisconsin towns on July 1, 1916. The present rates are made on the lowest combination by any gateway through which the traffic may move. The local rates between Sheboygan and Plymouth are applied proportionally between the latter point and Milwaukee and Manitowoc.

These proportional rates and the corresponding local rates for the first five classes are shown in the following table:

From Plymouth to—	Miles.	1	2	3	4	5
Milwaukee, local	66	28	22.5	19.5	14.5	11.5
Milwaukee, proportional	66	15	12	10	9	6
Manitowoc, local	39	23	17.5	15	13	10
Manitowoc, proportional	39	15	12	10	9	6
Sheboygan, local	14	15	12	10	9	6

From these gateways to the other complaining towns there are no proportional rates in effect.

Two witnesses representing shippers were examined in behalf of the complainants. The interest of one is in rates applicable to ensilage cutters from West Bend, and on the inbound materials

from which they are made. The other's interest is in rates on woodworking machinery and automobile motors from Sheboygan Falls. The rates on these articles are the combinations of class rates. In view of the extended statement of class-rate comparisons in the foregoing paragraphs it is unnecessary to set forth similar comparisons with reference to the eastern Wisconsin towns. For the same reasons defendants' comparisons do not require statement here.

POSITION OF THE CHICAGO AND MILWAUKEE INTERVENERS.

In its petition the Chicago Association of Commerce, intervener in the case of the southern Wisconsin cities, denies that the application of the trunk line and central freight association scales to Clinton, and intermediate points in Illinois, while failing to apply those scales to the complaining cities, results in unjust discrimination; it "expresses the conviction that the extension and maintenance of the trunk line and central freight association scale of rates to and from complaining cities must ultimately cause the application of said scales to be extended to cover, substantially speaking, the entire state of Wisconsin," and avers that the extension of those scales to and from the complaining cities will work an unjust and undue discrimination against the city of Chicago, its merchants and manufacturers. The origin and development of the central freight association scale were referred to in connection with the evidence offered by this intervener, but need not be dealt with here. One of the facts strongly emphasized may be stated by comparison of the rates governed by official classification from Indianapolis to Dubuque, which complainants ask to be prescribed to Madison, with those applicable from Chicago to Madison which are governed by western classification:

	Miles.	1	2	3	4	5
From Indianapolis to Dubuque	355	47.9	40.6	30.7	21.3	17.7
From Chicago to Madison	130	38.5	33.5	25.5	17.5	14

In many instances ratings under the official classification are lower than those under the western. It is the judgment of that intervener that the central freight association scale ought to be curtailed rather than extended and that the transportation conditions west of Chicago justify a higher scale of rates than is effective east of that city.

It was also testified by the representative of the Chicago interests that substantially all the merchandise "that comes from the east through Chicago is handled under almost identically the same conditions as the local traffic from Chicago." Charges for cartage must be paid and deliveries are made at the local station of the outbound carrier, where the merchandise is frequently loaded into the same car as the traffic originating at Chicago. Evidence was also offered by

the defendants to the same effect. The witness for the North Western testified that an exhaustive study had been made by that carrier of the cost of handling local traffic at its various stations as compared with the cost of handling through traffic. He stated that at the Wood street freight station in Chicago practically all of the through traffic from the east is transferred; that it is almost exclusively a transfer station, while the State street station is practically a local station. It was found that the costs of handling traffic at the two stations were within a few cents per ton the same. Another study with reference to the costs of handling a local shipment as compared with a through shipment, in carloads, showed practically the same result. It was testified that the larger part, if not all, of the less-than-carload shipments by car-ferry routes into Wisconsin are re-handled at the lake ports. These are among the considerations emphasized by defendants in support of their view that the combination of two reasonable intermediate rates makes a reasonable charge for Wisconsin traffic.

The Merchants & Manufacturers Association of Milwaukee, the largest manufacturing and jobbing center of the state of Wisconsin, opposes the petitions of complainants in these cases. This intervention is chiefly in the interest of the jobbers and wholesale dealers of that city. The Milwaukee jobber pays the local rates from trunk line territory on inbound traffic and distributes under local rates outbound, while the through inbound charges to interior cities, as already shown, are made by the combination of local rates to Milwaukee and proportional rates, in many instances, beyond. It is asserted that the differences beyond these local and proportional rates from Milwaukee for a long period have given, to the jobbers located both in eastern trunk line territory and interior Wisconsin, advantages in through transportation charges over the jobbers at Milwaukee, and that to grant the petitions of the complainants would substantially increase those advantages. It does not appear necessary to repeat here the rate comparisons offered by this intervener. They relate chiefly to the inbound movements to the jobbing centers. For the further movement from the interior centers to the point of distribution rates must be paid for which these comparisons do not make allowance and there are doubtless instances where the comparisons favor Milwaukee. That complainants' proposed rates, however, would operate to Milwaukee's disadvantage seems clear. That city urges recognition of its geographical location. Its position is summarized in argument as follows:

Being a breaking point in service between the east and west, it has naturally and logically been made a breaking point for through rates. Milwaukee stands at the border line of two traffic territories, the rate bases of which have long

been established upon substantially different levels; the scale of rates in the territory east of Lake Michigan being comparatively low and the scale west of Lake Michigan being higher.

INTERVENTIONS OF PAPER MANUFACTURERS.

The record contains evidence offered on behalf of manufacturers of paper located in the states of Wisconsin, Michigan, and New York. They were interested chiefly in rate relationships and it is understood that upon these matters they have been more fully heard in *Michigan Paper Mills Traffic Asso.* v. *A. & V. Ry. Co.*, 38 I. C. C., 517; 43 I. C. C., 16. For this reason no consideration will be given to that controversy in this report.

CONCLUSIONS.

1. The cancellation on July 1, 1916, of the joint through class rates from central freight association territory to that part of the state of Wisconsin to which those rates exceeded the lowest combination has removed one of the principal sources of complaint as to rates from that territory. By the use of proportional rates the lowest combination in many instances is lower than the combination of local rates on the basing points.

2. The evidence before us does not justify us in requiring the extension of the New York-Chicago scale or the central freight association scale to the complaining cities upon a percentage relationship based upon distance.

3. The circumstances and conditions which have been most strongly operative in requiring the maintenance of the present level of rates to the lower and upper Mississippi River crossings and to points in northern Illinois do not apply to transportation to the Wisconsin cities involved in this case and therefore have not exerted the same influence upon the rates to and from those cities. It has not been shown that the same rates per mile should be applied to those cities as to points in prorating territory. The differences in competitive conditions and other circumstances shown of record, however, do not justify the present large differences between the class rates applicable to and from points in northern Illinois and on the Mississippi River in Iowa, on the one hand, and those applicable to and from cities in southern Wisconsin, on the other. We find that the class rates between New England, trunk line, and central freight association territories, and the southern Wisconsin cities and La Crosse are unreasonable and unduly prejudicial. Joint through class rates on the basis outlined below and governed by official classification should be substituted in their stead. Class rates between New York and those cities shall not exceed the following percentages of the New York-Chicago rates: To La Crosse 145 per cent, to Madison

and Stoughton 125 per cent, and to Beloit, Janesville, and Watertown 118 per cent. At these percentages of the present New York-Chicago rates the first-class rates from New York in cents per 100 pounds will be 114.3 to La Crosse, 98.5 to Madison and Stoughton, and 93 to Beloit, Janesville, and Watertown. Class rates between other points in trunk line territory and points in New England territory, on the one hand, and the above-named Wisconsin cities, on the other, shall bear the same relation to the rates here fixed between New York and those cities as the class rates between the same points have heretofore borne to the rates between New York and the Wisconsin cities above named. Defendants will be expected, on or before June 30, 1917, to adjust class rates between points in central freight association territory and the above-named Wisconsin cities with proper relation to the rates here found reasonable between points in trunk line territory and those cities and in such manner as to give complainants reasonable rates, free from undue prejudice or disadvantage. Defendants will also be expected to maintain to and from intermediate points rates reasonably related to the rates herein prescribed to and from the points above named. The conclusions herein are independent of other proceedings now pending said to be based upon alleged emergencies and which must be determined upon other considerations than the instant record presents.

Our findings are not to be understood as condemning the making of class rates to Wisconsin points on the lowest combination, except as rates so made to southern Wisconsin cities have resulted in charges disproportionately high when compared with class rates to territory immediately adjacent in Illinois and on the Mississippi River in Iowa. The evidence before us does not indicate that any of the complaining cities or towns other than those above named are prejudiced by reason of the lower class rates applicable to points in prorating territory or that the class rates under attack to and from those cities and towns are unreasonable *per se*. Commodity rates under attack have not been shown to be unreasonable or unduly prejudicial.

4. The defendants did not attempt to justify the departures from the fourth section covered by the applications set for hearing with these cases, and those applications will therefore be denied. Defendants have asserted their willingness to adjust all through rates to and from Wisconsin points herein involved so as not to exceed the aggregates of intermediates and to observe the twin cities rates as maxima. They will be expected to make such revision in instances not covered as well as in instances covered by fourth section applications set down herewith.

Orders will be entered accordingly.

APPENDIX.

TABLE A.—*Railway operating revenue and other statistics of the Chicago & North Western Railway Co. for the year ended June 30, 1915.*

	Entire line.	Wisconsin.	Illinois.	Iowa.
Total rail-line transportation revenue..	$79,146,553.84	$23,895,796.23	$19,385,471.98	[illegible]
Freight revenue..........................	$51,923,860.74	$16,[illegible],441.96	$11,116,781.[illegible]	[illegible]
Freight revenue—intrastate............	$29,401,953.39	$9,266,351.78	$6,858,454.04	[illegible]
Mileage of road operated..............	8,107.[illegible]	2,170.08	[illegible]	[illegible]
Freight train loaded car-miles..........	349,086,864	106,314,813	[illegible],297,124	[illegible]
Tons revenue freight....................	40,399,215	22,554,917	18,546,[illegible]	[illegible]
Freight train miles per mile of road.....	1,910	1,943.1	3,768.1	[illegible]
Operating revenues, per mile of road...	$9,963.18	$11,180.81	$[illegible],157.[illegible]	[illegible]
Operating expenses, per mile of road...	$6,952.74	$6,951.53	$15,962.95	[illegible]
Net operating revenue..................	$[illegible],010.43	$4,[illegible]	$[illegible],198.[illegible]	[illegible]
Revenue per ton-mile of freight in mills.	8.3	8.1	7.5	[illegible]
Operating ratio..........................	69.7	62	[illegible]	[illegible]
Average haul, revenue freight	153.8	88.2	78.4	[illegible]
Bituminous coal.........................	4,782,519	[illegible],061	....	[illegible]
Total products of mines................	15,992,691	3,096,531	....	[illegible]

Separation of expenses on basis of revenue train-miles.

TABLE B.—*Railway operating revenue and other statistics of the Chicago, Milwaukee & St. Paul Railway Co. for the year ended June 30, 1915.*

	Entire line.	Wisconsin.	Illinois.	Iowa.
Total rail-line transportation revenue...	$90,100,118.18	$[illegible],457,810.43	$11,[illegible],[illegible].80	[illegible]
Freight revenue..........................	$[illegible],953,798.02	$13,176,174.54	$7,[illegible].29	[illegible]
Freight revenue—intrastate	$13,392,897.17	$4,041,748.61	$1,746,[illegible].52	[illegible]
Miles of road operated..................	10,0[illegible].5	1,[illegible].9	476.9	[illegible]
Freight train loaded car-miles..........	479,186,265	[illegible],657,722	57,[illegible],645	[illegible]
Tons revenue freight....................	[illegible]	15,[illegible],874	13,[illegible]	[illegible]
Freight train miles per mile of road.....	1,928	2,012	4,[illegible]	[illegible]
Operating revenues, per mile of road...	$9,[illegible].71	$11,123.01	$[illegible].11	[illegible]
Operating expenses, per mile of road...	$6,164.76	$7,143.78	$[illegible],544.73	[illegible]
Net operating revenues, per mile of road.	$2,[illegible]	$[illegible].23	[illegible]	[illegible]
Revenue per ton-mile of freight, in mills.	7.8	8.1	7.9	7.[illegible]
Operating ratio..........................	67.7	64.1	[illegible].9	71.[illegible]
Average haul, revenue freight..........	248.3	105.8	68.6	[illegible]
Bituminous coal.........................	3,308,115	1,347,428	1,322,720	1,[illegible]
Total products of mines................	8,821,707	3,788,457	2,909,[illegible]	2,[illegible]

No. 8871.

RAILROAD COMMISSIONERS OF THE STATE OF FLORIDA

v.

SOUTHERN EXPRESS COMPANY ET AL.

Submitted February 14, 1917. Decided May 17, 1917.

Upon complaint that the facilities for the shipment of strawberries from Florida points to various destinations in eastern trunk line territory are inadequate and defective and that the rates for transportation and refrigeration are unjust and unreasonable; *Held:*

1. Following the decision of the Supreme Court of the United States in *United States* v. *Pennsylvania R. R. Co.*, 242 U. S., 208, the Commission is without authority, in the absence of undue discrimination, to order carriers to acquire equipment of a special type or to require the transportation of refrigerator cars in passenger or special trains.

2. Rates and refrigeration charges for the transportation of strawberries from and to points involved not shown to be unjust or unreasonable.

D. C. McMullen for complainant.

Alonzo Wilder for Plant City Growers' Association, Kathleen Growers' Association, Dover Strawberry Association, and Sidney Truck Growers' Association.

Robert C. Alston, *Philip H. Alston*, and *W. W. Owen* for Southern Express Company.

R. Walton Moore and *Frank W. Gwathmey* for Seaboard Air Line Railway, Atlantic Coast Line Railroad Company, Richmond, Fredericksburg & Potomac Railroad Company, and Southern Railway Company.

H. K. Crafts for Seaboard Air Line Railway.

REPORT OF THE COMMISSION.

CLARK, *Commissioner:*

The Railroad Commissioners of the State of Florida attack the rates for transportation and refrigeration of strawberries from producing points in Florida to various points in eastern trunk line territory, and allege that the facilities provided for such transportation are inadequate. The prayer is for the establishment of refrigerator express service on passenger trains or in trains making passenger train time; that a faster schedule be required; and that just and reasonable rates be prescribed.

There are two principal strawberry producing districts in Florida. One is about 50 miles southwest of Jacksonville, in which the principal shipping points are Raiford and Lake Butler on the Atlantic Coast Line Railroad, and Lawtey and Starke on the Seaboard Air Line Railway. The other is about 145 miles farther south, of which Plant City, served by both roads, is the principal shipping point.

There are three methods of transporting strawberries from Florida.

(1) By express, in crates, unrefrigerated, which is referred to as "open express," and used only to a limited extent at the beginning of the season or in shipping to near-by points. No complaint is made of the rates under this method.

(2) By express, in portable refrigerator boxes termed "pony refrigerators." The boxes, which are equipped with reservoirs or pans for ice and have a capacity of either 64 or 80 quarts of berries each, are loaded into the ordinary express cars, handled in passenger trains. The carrier does not own the boxes and is not responsible for the refrigeration. It accepts the loaded boxes from the shippers ready for transportation. The boxes are usually rented by the shipper at a cost amounting to about 4 cents per quart, which includes refrigeration and the return of the empty box. The 64-quart boxes weigh loaded about 300 pounds each, but are accepted by the express company at an estimated weight of 200 pounds. The 80-quart boxes weigh loaded about 450 pounds and are shipped at an estimated weight of 250 pounds. The express rate on strawberries per 100 pounds, in either the 64 or 80 quart boxes, from Plant City, Fla., for example, to New York, N. Y., is $2.48, amounting to 7.75 cents per quart. The movement by this method is much larger than that by open express, but it is considered expensive and inadequate.

(3) By freight, in refrigerator cars, under which method the greater part of the traffic is now handled. The berries are in 32-quart crates, which are placed on the floor of the car and in tiers above, with strips of lumber between to permit the circulation of air. Two carload minima are provided, one of 100 crates, under which the freight rate from the producing districts to New York, the principal market, is $1.83½ per crate and the refrigeration rate 72½ cents per crate; and one of 175 crates, under which the rates per crate for freight and refrigeration are $1.30 and 50 cents, respectively. The total charge per quart for freight and refrigeration, therefore, amounts to about 8 cents under the 100-crate minimum and 5.62 cents under the 175-crate minimum.

The Atlantic Coast Line and Seaboard Air Line are under contract to use in this traffic only cars of the Fruit Growers' Express Company, commonly referred to as F. G. E. cars. That company is

bound by the same contract to furnish all the cars needed for the traffic. The time schedule from points of origin to New York is about four and a half days; that is, shipments made on Monday are due to arrive in New York in time to be marketed Friday morning. The route of movement is via the Atlantic Coast Line or the Seaboard Air Line to Acca, just outside of Richmond, Va., the Richmond, Fredericksburg & Potomac Railroad and the Washington Southern Railway to Potomac Yards, Va., and the Pennsylvania system to destination.

Complainants compare these facilities and rates with those available to shippers from other producing sections, especially in Louisiana, to the same markets. It is stated that except at the beginning of the Florida season the Florida growers are in direct competition with the Louisiana growers in the eastern markets. Strawberries from the Louisiana fields are usually transported in refrigerator cars moved either by express or freight. A witness estimated that about 65 per cent of the movement is by express and 35 per cent by freight. The present carload minimum by either freight or express is 17,000 pounds. When handled by express the cars are hauled either in passenger or special trains. Express service is preferred to freight service on account of the greater expedition, the more careful handling, and the better riding and refrigerating qualities of the express cars. The proportion moving by express is therefore increasing.

Shipments leaving Hammond, La., a representative point, on Monday arrive in Philadelphia or New York on Thursday, but too late for market that day. Practically, therefore, such shipments are marketed on the same day as berries shipped from Florida at the same time. The difference in distance is about 500 miles in favor of Florida. Shipments by freight from Louisiana are about one day longer in transit. The freight rate from Hammond, La., to New York was $1.24 per 100 pounds at the time of the hearing, but is now $1.302 per 100 pounds, and the refrigeration rate $72.50 per car, making a combination charge of about 2.74 cents per quart. The express rate, Hammond to New York, is $1.89 per 100 pounds, or 2.99 cents per quart, and the refrigeration charge 4.19 mills per quart, making a total charge of 3.41 cents per quart. Shipments from Louisiana move over the Illinois Central to an Illinois junction, where they are transferred to eastern connections.

The Louisiana shippers have lower rates per quart than do the Florida shippers, and the greater expedition of the express shipments from Louisiana places them substantially on an equality with the Florida shippers in the matter of time, notwithstanding the difference in distance. Practically all carload shipments of strawberries

from Louisiana to the destinations herein involved are moved by express. The Florida and Louisiana shippers are not served by the same carriers, and no allegation of unlawful discrimination is made. The disparity in service and rates is cited in support of the allegations of deficiencies in service and unreasonableness in rates from Florida. Complainants contend that the cars used in the Florida service are inferior in refrigerating and carrying qualities, and that the time in transit is too great. They admitted at the argument that the cars are adequate and sufficient for ordinary fruits and vegetables, but said that they are not so for the transportation of strawberries.

The voluminous record is largely taken up with evidence relating to service, in which term we include equipment and other facilities furnished, the kind and amount of refrigeration, and the expedition of movement. Defendants deny our jurisdiction in the matter of requiring the carriers to provide equipment of the special character requested, and the disposition of this question is properly antecedent to any further analysis of the evidence.

At the time this complaint was filed and at the time of the hearing there was pending before the Supreme Court of the United States, upon appeal from the United States district court for the western district of Pennsylvania, the question of the power of the Commission to require carriers to provide tank cars instead of box cars for shipments of oil. The lower court had decided the question in the negative, saying, among other things:

> * * * we find nothing in the law which confers upon the Commission power to compel a carrier to acquire facilities which it does not possess or to acquire better facilities than those it possesses, not with the object of preventing discrimination and preferences, but in order that the shipper may have larger, better, and perhaps more economical facilities. *Pennsylvania R. R. Co.* v. *United States*, 227 Fed. Rep., 911, 918.

In December, 1916, the Supreme Court of the United States sustained this finding. *United States* v. *Pennsylvania R. R. Co.*, 242 U. S., 208. Upon the argument of the instant case counsel for complainant stated that if he had not seen the report of the Commission in *Pennsylvania Paraffine Works* v. *P. R. R. Co.*, 34 I. C. C., 179, he might never have brought this complaint, and that he advised the shippers that there was a possibility of the Supreme Court of the United States reversing it. Nevertheless he was of the opinion that the decision of the Supreme Court should not govern in the case now before us for the reason that the courts had before them only the question of furnishing additional equipment, while here is involved the question of enforcing the carriers' obligation to transport with proper care the goods offered and accepted for shipment. But

the reasoning which leads to the conclusion that we have not the power to compel carriers to furnish additional equipment leads also to the conclusion that we are equally lacking in power, in the absence of undue discrimination, to require the furnishing of equipment of a particular kind or type. That this is the correct interpretation of the decision is indicated by the headnote, reading:

Without attempting to define the measure of the carrier's duty to satisfy the needs of shippers by adding in quantity or kind to its car equipment, *Held,* That neither by the act of 1887 nor the amendatory act of 1906 did Congress intend that the enforcement of such duty might be compelled by orders of the Interstate Commerce Commission.

In reply to the contention that the failure to furnish service of a particular kind or degree of excellence is a "practice" subject to regulation and correction under section 15, the court said:

Let us test the contention and see where it takes us. The request was for a special facility, a combination of package and car, and the question, then, is whether the neglect to provide it or to furnish it was a "practice" within the meaning of S. 15. The far-reaching effect of an affirmative answer is instantly apparent, and there must be hesitation to declare it from the use of so inapt a word as "practice." Following a well-known rule of construction, we must rather suppose its association was intended to confine it to acts or conduct having the same purpose as its associates. And there were many such acts for which the word could provide—practices which confused the relation of shippers and carriers, burdened transportation, favored the large shipper and oppressed the small one. These have illustrations in decisions of the Commission. And this was purpose enough, remedied all that was deemed evil in privately owned cars of any type. Beyond that it was not necessary to go; beyond that there were serious impediments to going; and we can not but believe that if beyond that it was intended to go there would have been explicit declaration of the intent, with such provision as to notice and time and preparation as its consequences would demand—not ambushed in obscurity and suddenly disclosed by construction to turn accepted custom into delinquency, a construction that could be disputed and was disputed.

As we have seen, neither the Atlantic Coast Line nor the Seaboard Air Line own refrigerator cars, but such cars are furnished to those roads by the Fruit Growers' Express Company. The cars so furnished are used exclusively for shipments by freight. It necessarily follows that since we are without authority to require the carriers to acquire a different type of car for use in freight service we are equally without authority to require the carriers to acquire refrigerator cars for use in express service.

It is unnecessary to review the mass of evidence bearing upon the technicalities of construction of refrigerator cars, opposing theories of refrigeration, the advantages and disadvantages of the precooling of strawberries, and the practicability of reducing the time of freight trains. It may, however, be not amiss to remark that the increasing volume of traffic needing and demanding refrigeration renders the

subject of effective and efficient refrigeration of increasing importance. Much has been said about the advisability of standard refrigeration charges. The best foundation that could be laid for standardization of refrigerator service charges would be standardization of refrigeration service.

We do not find anything in the record to support a conclusion, or even to raise a presumption, that the express rates for transportation of strawberries in refrigerator boxes are unreasonably high for the service rendered. Though inadequate for handling the entire traffic, this service meets a transportation need, and the shippers desire its continuance.

But little evidence was submitted by complainant relative to the unreasonableness of the carload rates. In addition to the comparison of the rates from Louisiana heretofore referred to, complainant introduced exhibits comparing the rates in issue with those in force on vegetables n. o. s. and on oranges in carloads between the same points. The rates attacked yield more revenue per car than the rates cited in comparison, but this evidence is not sufficient to enable us to condemn the rates or determine what rates would be reasonable.

In *Fla. Frt. & Veg. Shprs. Protect. Asso.* v. *A. C. L. R. R. Co.*, 14 I. C. C., 476, we reduced the carload minimum on strawberries from Starke and Lawtey, Fla., to New York and other points from 200 crates to 175 crates. No complaint was made in that case of the rate of $1.80 per crate, including refrigeration, or of the rate and minimum of 100 crates. In that case we said:

> To reduce the number of crates carried in a car is to reduce by that much the net income of the railway company from the transportation of the car, for the cost both of hauling and of refrigerating is substantially the same whether the car contains 150 or 200 crates. It is therefore in the interest of economy and in the final interest of both shipper and carrier that the minimum should be as large as can be carried in good condition to destination. Before deciding to reduce this minimum without advancing the rate we must inquire whether the present rate yields to the carrier a fair compensation for its service and what reduction could be made without shrinking the revenue from the car to an unreasonable point.

The present differences in car earnings on vegetables and strawberries are less than they were when *Fla. Frt. & Veg. Shprs. Protect. Asso.* v. *A. C. L. R. R. Co.*, *supra*, was decided. Furthermore, the present rates and minima on strawberries have been extended and now apply from the Plant City section and other sections approximately 270 miles south of Jacksonville.

Other producing districts have differing minima, as is shown in the following comparative statement. In some cases the prescribed minimum is expressed in pounds, and in others in crates of speci-

fied size. We have, therefore, used both measures, allowing 50 pounds as the weight of a 32-quart crate of berries. The record does not indicate the number of pounds allowed for a 24-quart crate.

Producing district.	Number of crates.	Size of crates.	Minimum weight.
Florida	100	32-quart.	5,000
Do	175	...do.....	8,750
North Carolina	236	...do.....	11,800
Do	300	...do.....	15,000
Norfolk	240	...do.....	12,000
Do	300	...do.....	15,000
Maryland	240	...do.....	12,000
Do	300	...do.....	15,000
East Tennessee	400	24-quart.	13,300
West Tennessee	525	...do.....	17,500
Alabama	400	...do.....	13,300
Louisiana	340	32-quart.	17,000

The marked contrast between the minima from Florida and those from the other producing districts can not fail to attract notice. The present rates from Florida produce earnings per ton-mile that are relatively high, but because of the low carload minimum weight they produce car-mile earnings that are relatively low.

The representative of the Fruit Growers' Express Company testified that in his opinion 224 crates of berries in good shipping condition could be safely transported from the Florida fields to New York in an F. G. E. car. Complainants nevertheless object to any increase in the 175-crate minimum, adhering to the position taken by the shippers nine years earlier. A load of 175 crates occupies only about 31 per cent of the loading space in a car and the percentage of weight capacity is probably even less. For the year 1916 the average loading of F. G. E. cars from Florida, shipped via the Seaboard Air Line, was 161 crates, weighing about 8,050 pounds. The record shows that strawberries are regularly transported in large volume by freight from other districts, in the same type of cars. The reason for the necessity of a minimum so much lower from Florida does not satisfactorily appear. The greater distance in some cases, the warmer climate, and differences in the shipping seasons or in the shipping qualities of the fruit are possible explanations. So low a carload minimum must be recognized as justification for a relatively high transportation rate.

No direct evidence was introduced by complainant bearing on the reasonableness of the refrigeration charges other than the comparisons of such charges shown in the exhibits comparing the rates. The refrigeration charges are blanketed over the entire strawberry producing section of Florida in the same manner as are the freight rates.

The witness for the Fruit Growers' Express Company testified in detail as to the various items considered in arriving at the refrigeration charges on a shipment from Plant City to New York, for example. He stated that such costs are variable, depending upon weather and other conditions, but that the charges are based upon a fair average of expenses for the season. Upon cross-examination complainant undertook to show that the various items presented in justification of the charges were excessive, and it would appear that they might be somewhat reduced. The record does not show that it would take as much ice, for instance, to refrigerate a carload of strawberries from Starke or Lawtey as from Plant City. The average rate on vegetables from Starke and Plant City to New York is 59½ cents per crate, minimum 350 crates of 50 pounds each, and the refrigeration rate is 16½ cents per crate, minimum 400 crates of 50 pounds each. The refrigeration charge on a carload of vegetables is therefore $66, whereas the charge on a carload of strawberries of 175 crates is $87.50. It does not seem that the cost of refrigerating a carload of strawberries should be much, if any, greater than that of refrigerating a carload of vegetables. We can not on this record, however, determine what fair and reasonable charges for refrigeration would be. It necessarily follows that the complaint must be dismissed.

No. 8030.

TEXAS, OKLAHOMA & EASTERN RAILROAD COMPANY

v.

ST. LOUIS & SAN FRANCISCO RAILROAD COMPANY ET AL.

Submitted December 1, 1915. Decided April 28, 1917.

Charges on various shipments of railroad rails and fastenings from Ayers, La., empty flat cars from St. Louis, Mo., and locomotives and tenders from Philadelphia, Pa., to Valliant, Okla., found to have been unreasonable. Reparation awarded.

J. L. Kirkpatrick for complainant.

E. T. Dickinson for St. Louis & San Francisco Railroad Company.

Report of the Commission.

By the Commission:

Complainant, a corporation, is a common carrier engaged in interstate commerce. By complaint, filed May 19, 1915, as amended, it alleges that unreasonable and unduly prejudicial charges were collected by defendants for the transportation to Valliant, Okla., between November 6, 1911, and December 18, 1912, inclusive, of 13 carloads of steel railroad rails and fastenings from Ayers, La., 22 empty flat cars and 5 carloads of steel underframes from St. Louis, Mo., and 3 locomotives and tenders from Philadelphia, Pa. Reparation is asked. The respective claims, with the exception hereinafter noted, were presented to the Commission informally within two years after the causes of action accrued.

Of the 13 carload shipments of rails and fastenings from Ayers, 10 were consigned to complainant at Valliant and the other 3 to one O. D. Turner at Ashdown, Ark., from which point they were subsequently rebilled to complainant at Valliant. The latter shipments were local, subject to the local rates to and from Ashdown, and, these rates as applied to local shipments not being under attack, will not be further considered. The remaining shipments moved between November 16, 1911, and June 4, 1912, by way of Kansas City Southern and the Texarkana & Fort Smith railways from Ayers to Ashdown; St. Louis & San Francisco Railroad, hereinafter called the Frisco, from Ashdown to Valliant, a total distance

of 239 miles. No joint rate was in effect. The applicable rates were $2.75 per long ton on the rails and per net ton on the fastenings for the haul from Ayers to Ashdown, and 21 cents per 100 pounds, equivalent to $4.20 per net ton, beyond. There are apparent discrepancies in the various carload weights shown of record, and it would appear that $2.75 per long ton was charged on both rails and fastenings from Ayers to Ashdown; so that there appear to be outstanding overcharges and undercharges. Effective August 3, 1912, defendants established over the route of movement joint commodity rates of $4.25 per long ton on rails and per net ton on fastenings, minimum 20 tons. These rates, which are still in effect, compare favorably with an existing rate of $5 per ton on like traffic, straight or mixed carloads, from Galveston and Texas City, Tex., to Valliant and other Frisco points.

The shipments of empty flat cars originated at St. Louis between July 16 and December 30, 1912, and were billed locally to Valliant. They moved over the Frisco, a distance of 584 miles, and after delivery at Valliant were forwarded free, account company material, to points on complainant's line. Charges were assessed by the Frisco on each car in the sum of $60.40, on the basis of a distance rate of 10 cents per mile, plus a $2 switching charge at St. Louis. Effective March 12, 1914, the Frisco and complainant established a joint rate of $47 per empty flat car from St. Louis to all points on complainant's line, the switching charge at St. Louis being absorbed by the Frisco. Complainant's division on through traffic was fixed at 20 per cent of the rate. The same rate was contemporaneously established to points on the Oklahoma, New Mexico & Pacific Railway, which line connects with the Frisco at Ardmore, Okla., approximately 75 miles farther than Valliant from St. Louis. Complainant also cites rates of $42 and $50 per car, published in southwestern lines' tariff, from St. Louis and Chicago, respectively, to Texas common points, for distances substantially greater than from St. Louis to Valliant. Complainant prays reparation on the basis of the present joint rate, plus the amount that would accrue to it under its present division.

The shipments of steel underframes, consisting of five carloads, also originated at St. Louis, August 10, 1912, and moved over the Frisco to Valliant under local billing to that point, whence they were forwarded free to a point on complainant's line. Charges were collected on basis of a rate of 30 cents per 100 pounds, St. Louis to Valliant. Subsequently, March 22, 1913, the same rate was published as a joint rate to points on complainant's line, of which rate complainant's division on through traffic is 20 per cent, and on that basis reparation is asked.

The three locomotives and tenders were shipped from Philadelphia between March 9 and December 18, 1912. The first shipment, which is shown to have arrived at and moved forward from St. Louis March 20, 1912, apparently was delivered more than two years prior to the informal presentation of the claim, June 11, 1914, and recovery thereon is barred by the statute of limitations. The other two were billed to Broken Bow, Okla., a point on complainant's line, and moved: Philadelphia & Reading, Baltimore & Ohio, and Toledo, St. Louis & Western railroads to East St. Louis, Ill.; St. Louis Merchants' Bridge Terminal Railway to St. Louis; and thence over the Frisco to Valliant, from which point they were forwarded to destination over complainant's line free, account company material. Charges were collected on basis of a combination rate of 71 cents per 100 pounds, composed of 33 cents on 50 per cent of the actual weight of shipments from Philadelphia to East St. Louis and 38 cents on the actual weight from East St. Louis to Valliant. Effective March 12, 1914, the Frisco, with complainant's concurrence, published a joint commodity rate of 25 cents per 100 pounds, minimum 60,000 pounds, on locomotives and tenders from East St. Louis and St. Louis to Valliant, Broken Bow, and other points on complainant's line, making a through rate from Philadelphia of 58 cents. Out of the component from St. Louis complainant also receives a division of 20 per cent on traffic destined to points on its line, and asks reparation on these shipments on the basis of the subsequently established joint rate, plus the amount that would accrue to it under its present division. In comparison with the through rate charged complainant cites rates of 50 cents per 100 pounds applying on like traffic from Allegheny and Pittsburgh, Pa., and Dunkirk, N. Y., to Texas common points, the average distance to which points is substantially greater than from Philadelphia to Valliant or Broken Bow. It also cites rates of 48.5 and 49 cents maintained from Lima and Mansfield, Ohio, respectively, to Texas common points.

The Frisco, the only defendant represented at the hearing, admitted that the charges collected on the shipments involved in the complaint were unreasonable and expressed willingness to make reparation on the basis claimed. There is no showing of undue prejudice.

With respect to the claims for reparation on the shipments of empty flat cars, steel underframes, and locomotives on the basis of complainant's divisions of the present joint rates, while it is conceded of record that the publication of such rates was delayed to await an expected determination of complainant's status under certain pending tap-line cases, the fact remains that none were in effect when the respective shipments moved. Neither the present joint rates nor the divisions thereof were prescribed or fixed by us, but by

the carriers themselves. In addition, the empty cars and steel underframes were billed to Valliant, the point of delivery to complainant in all cases, to which point the present rates also apply; and there was no attempt to show that these rates are or would have been unreasonable for the transportation to that delivering point. As to none of the shipments is there ground for an award of reparation on any divisional basis.

Upon all the facts of record we find that the charges collected on the various shipments were unreasonable to the following extent: On the 10 carloads of rails and fastenings billed through from Ayers to Valliant, to the extent that the charges collected exceeded those which would have accrued at the subsequently established rates of $4.25 per long ton on the rails and per net ton on the fastenings; on the empty flat cars, to the extent that they exceeded the charges which would have accrued at the subsequently established rate of $47 per car; and on the second and third shipments of locomotives and tenders, to the extent that they exceeded the charges that would have accrued at the subsequently established rate of 58 cents per 100 pounds and applicable minima, which rates we find to have been reasonable. We further find that complainant made the shipments for consideration as described; that it paid and bore charges thereon at the rates herein found to have been unreasonable; that it has been damaged to the extent of the difference between the charges collected and the charges that would have accrued on basis of the rates herein found reasonable; and that it is entitled to reparation, with interest. The exact amount of reparation due can not be determined on the present record. Complainant should prepare a statement showing the details of the shipments in accordance with rule V of the Rules of Practice. This statement should include any outstanding overcharge or undercharge which may be found to exist, and should be submitted to the proper defendants for verification. Upon receipt of a statement so prepared and verified we will consider the entry of an order awarding reparation. As the rates herein found reasonable have been in effect for more than two years, no order for the future is necessary.

HALL, *Chairman*, dissents.

No. 8421.

WEST LUMBER COMPANY

v.

ST. LOUIS & SAN FRANCISCO RAILROAD COMPANY ET AL.

Submitted June 26, 1916. Decided May 12, 1917.

Rate on coal in carloads from Greenwood, Ark., and other adjacent points taking the same rates, to Onalaska and Sequoyah, Tex., found to have been and to be unreasonable and unduly prejudicial. Reparation awarded.

J. M. Simmons for complainant and intervener.

C. S. Burg for Missouri, Kansas & Texas Railway Company and its receiver, and Missouri, Kansas & Texas Railway Company of Texas and its receiver.

J. F. Garvin for St. Louis & San Francisco Railroad Company and its receivers; Missouri, Kansas & Texas Railway Company and its receiver; and Missouri, Kansas & Texas Railway Company of Texas and its receiver.

L. M. Hogsett for International & Great Northern Railway Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the lumber business at Houston, Tex., with a sawmill at Onalaska, Tex. By complaint, filed October 26, 1915, as amended, it alleges that the rate of $3.10 per net ton, charged by defendants for the transportation of lump coal in carloads from points in mine groups 7 and 14 in the so-called Oklahoma-Arkansas coal field to Onalaska, is unreasonable and unduly prejudicial to the extent that it exceeded and exceeds $2.70 per net ton. Reparation is asked, and the establishment of a reasonable rate for the future. All rates are stated in amounts per net ton.

Thompson Brothers Lumber Company, a corporation also engaged in the lumber business at Houston, with a sawmill at Sequoyah, Tex., was permitted to intervene. It alleges that the rate on coal from the same points of origin to Sequoyah, which is the same as that contemporaneously maintained to Onalaska, is unreasonable and unduly prejudicial. A reasonable and nonprejudicial rate is asked.

The shipments for consideration, consisting of numerous carloads of coal, originated at Greenwood, Ark., located in group 7, and

moved during the period from February 8, 1915, to February 24, 1916, by way of Midland Valley Railroad to Muskogee, Okla.; Missouri, Kansas & Texas Railway and Missouri, Kansas & Texas Railway Company of Texas to Mineola, Tex.; International & Great Northern Railway to Trinity, Tex.; Missouri, Kansas & Texas Railway Company of Texas to destination, hereinafter called the Trinity route. Charges were collected on the shipments which moved prior to October 30, 1915, on basis of a rate of $3.10; subsequently on basis of the present rate of $3.20, to which amount the former rate of $3.10 was increased, effective September 30, 1915, following *The 1915 Western Rate Advance Case*, 35 I. C. C., 497, 603. Two shipments which moved on October 6 and 15, 1915, on which a rate of $3.10 was applied, were undercharged.

Prior to November 7, 1913, all of complainant's shipments moved: Midland Valley Railroad to Panama, Okla.; Kansas City Southern Railway and Texarkana & Fort Smith Railway to Shreveport, La.; Houston & Shreveport Railroad and Houston East & West Texas Railway to Livingston, Tex.; Missouri, Kansas & Texas Railway Company of Texas to destination, hereinafter called the Livingston route, over which the same rates applied as were applicable by way of the Trinity route. Effective November 7, 1913, the Livingston route from group 7 was canceled, in order to give the Missouri, Kansas & Texas Railway Company of Texas, hereinafter called defendant, a longer haul, its haul by way of the canceled route being only 13.7 miles. Onalaska is 538.4 miles from Greenwood by way of the Trinity route, and 441.1 miles by way of the Livingston route. Effective April 25, 1915, the Livingston route from group 14 was also canceled.

Sequoyah is on defendant's line, 1.6 miles west of Trinity, and 21 miles west of Onalaska. Sequoyah, Trinity, and Onalaska are in Texas common-point territory, and from the points of origin involved take the same rate on all commodities, except coal. It is admitted that Onalaska and Sequoyah should take the same rates by way of the Trinity route.

Defendant contends that the rate over the Livingston route is no measure of the reasonableness of the rate over the Trinity route, because the latter involves a longer haul of about 100 miles. In other respects it is admitted that the transportation conditions are about the same. It is observed that one additional carrier participates in the haul by way of the Livingston route.

Complainant cites in comparison the following rates in which the defendant participates from Oklahoma points on defendant's line in mine group 10 to certain destinations where competitive sawmills are located:

To—	Distance.	Rate.	Earnings per ton-mile.
	Miles.		*Mills.*
Alexandria, La	538	$2.35	4.37
Eunice, La	595	2.60	4.37
Beaumont, Tex	519	2.60	5.00
Graysburg, Tex	521	2.60	4.99
Orange, Tex	557	2.60	4.67
Sour Lake, Tex	522	2.60	4.99
Fostoria, Tex	523	2.70	5.16

Also a rate of $2.70 from all points in group 7 to Keltys, Diboll, Groveton, Fostoria, and Livingston, Tex. The average distances from four representative points in this group, viz, Bokoshe, Briartown, and Centersville, Okla., and Denman, Ark., to the points above named, vary from 441.4 miles to 615.8 miles, and the ton-mile earnings vary from 6.02 mills to 4.38 mills. The same rate applies from all points in group 14 to Keltys, Diboll, and Groveton. The rates from groups 7 and 14 to Graysburg, Tex., are $2.60. The average distances from representative points in groups 7 and 14 are 844.1 and 718.3 miles, respectively, and the ton-mile earnings are 3.18 mills and 3.74 mills, respectively. These distances are by way of defendant's line through Muskogee.

Defendant replies that it participates in these rates only when the traffic originates on its own line, and that in that event fewer carriers share in the divisions. It observes that the Texas commission distance scale for coal is $2.92 for 540 miles, and cites various rates approved by this Commission in *Oklahoma & Arkansas Coal Traffic Bureau* v. *C., R. I. & P.*, 14 I. C. C., 216, 226, 227, 228, which are higher for the proportionate distances than $2.70 for 538 miles.

In *West Lumber Co.* v. *St. L. & S. F. R. R. Co.*, 38 I. C. C., 401, we prescribed a rate of $2.70 from certain points in groups 7 and 14 to Onalaska by way of the Livingston route, and this rate, which became effective May 15, 1916, is still in effect.

The average ton-mile earnings under this rate from mines in group 7 by way of the Livingston route are 6.09 mills. The ton-mile earnings under the same rate from Greenwood by way of the Trinity route would be 5.04 mills.

Upon the record we find the rates from Greenwood and other points of origin in groups 7 and 14 of the Oklahoma-Arkansas coal field to Onalaska and Sequoyah were, are, and for the future will be unreasonable and unduly prejudicial to the extent that they exceeded and may exceed $2.70 per net ton, which we find reasonable. We further find that complainant made the shipments as described and paid and bore the charges thereon at the rate herein found unreasonable; that it has been damaged to the extent of the difference between the charges paid and the charges which would have accrued at the rate

herein found to have been and to be reasonable; and that it is entitled to reparation, with interest. The amount of reparation due can not be determined on this record and complainant should prepare a statement showing the details of the shipments in accordance with rule V of the Rules of Practice, which statement should be submitted to the defendants for verification. Upon receipt of a statement so prepared and verified we shall consider the entry of an order awarding reparation. The undercharges herein found outstanding may be waived.

An appropriate order will be entered.

No. 8772.

BAINBRIDGE OIL COMPANY

v.

MARIANNA & BLOUNTSTOWN RAILROAD COMPANY ET AL.

Submitted August 14, 1916. Decided May 12, 1917.

Rates on certain carload shipments of cotton seed from various points in Florida to Bainbridge, Ga., found to have been unreasonable. Reparation awarded.

Daniel W. Roundtree for complainant.

No appearance for defendants.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation formerly engaged in the oil business, with its principal office at Atlanta, Ga., and a mill at Bainbridge, Ga. By complaint, filed April 1, 1916, it alleges that the rates charged for the transportation of 26 carloads of cotton seed from Sneads, Cypress, Marianna, Fairgrounds, and Alliance, Fla., to Bainbridge, during the period from August 30, 1911, to February 16, 1912, inclusive, were unreasonable. Reparation is asked. The claim was presented to the Commission informally July 2, 1913. Rates are stated in cents per 100 pounds, except when otherwise stated.

The shipments, except two from Alliance, moved over the Louisville & Nashville Railroad to River Junction, Fla., and Atlantic Coast Line Railroad thence to destination. The two shipments from

Alliance moved over the Marianna & Blountstown Railroad to Marianna, and thence over the route traversed by the other shipments. The shipments aggregated 1,072,100 pounds and charges in the sum of $1,506.49 were ultimately collected thereon, based on the following combination rates, no joint rates being in effect: 12.05 cents from Sneads; 13.05 cents from Cypress; 14.05 cents from Marianna; 15.05 cents from Fairgrounds; and 24.05 cents from Alliance. These rates were composed of a class M rate of $1.21 per net ton, equivalent to 6.05 cents per 100 pounds, from River Junction to Bainbridge, and the class D rates, except as noted, from the points of origin to River Junction as follows: 6 cents from Sneads; 7 cents from Cypress; 8 cents from Marianna; 9 cents from Fairgrounds; and 18 cents from Alliance, composed of 10 cents to Marianna and 8 cents beyond. The 10-cent component from Alliance to Marianna was applied without tariff authority. Alliance is located between Cox and Altha, Fla., from which points a class D rate of 10 cents was applicable to Marianna.

Subsequently to the movement of these shipments a commodity rate of 6 cents on cotton seed, in carloads, was established from Alliance to Marianna and is still in effect. The class M rate of $1.21 per ton, which was applied for the movement from River Junction to Bainbridge, was applicable on cotton seed only when intended for fertilizer purposes. We have uniformly condemned restrictions of this character. However, a further proviso made the rate applicable only when the value of the cotton seed was limited to $10 per ton and so expressed on the bill of lading. No limitation was placed on the value of the shipments involved. The rate legally applicable for the movement from River Junction to Bainbridge was the class D rate of 7½ cents. There is therefore an outstanding undercharge of 1.45 cents per 100 pounds on each of the shipments involved. Complainant's attack is directed specifically against the rates charged for the movement over the Louisville & Nashville Railroad to River Junction.

Prior to March 1, 1911, the following class N rates were legally applicable on cotton seed, in carloads, from the points named on the Louisville & Nashville Railroad to River Junction: 3 cents from Sneads, 5 miles; 4 cents from Cypress, 15 miles; 6 cents from Marianna and Fairgrounds, 25 miles and 27 miles, respectively. On March 1, 1911, the class N rates were canceled, leaving applicable the class D rates above referred to. After the shipments moved, commodity rates equivalent to the class N rates were established on cotton seed, in carloads, to River Junction from all of the points named, except Fairgrounds, on the Louisville & Nashville Railroad, effective March 26, 1912, and from Fairgrounds, effective March 24,

1913. As the components applied to River Junction represent increases since January 1, 1910, the burden of justifying them is upon the defendants.

When the shipments moved the following rates applicable on interstate shipments of cotton seed, in carloads, were in effect to Pensacola, Fla., from points in Florida on the Louisville & Nashville: 3 cents from Bohemia, 6 miles; 4 cents from Mulat, 13 miles; 5 cents from Milton, 20 miles; and 6 cents from Holts, 39 miles. These rates compare favorably with the rates asked by complainant, which rates were in effect to River Junction both prior and subsequently to the movement of the shipments.

We find that the rates charged on the shipments in question were unreasonable to the extent that the components thereof applicable to the transportation over the Louisville & Nashville Railroad to River Junction exceeded the class N rates in effect before and the commodity rates established after the shipments moved; that complainant made the shipments as described and paid and bore the charges thereon at the rates herein found to have been unreasonable; that it has been damaged to the extent of the difference between the charges paid and the charges that would have accrued at the rates herein found to have been reasonable; and that it is entitled to reparation, with interest, from the Louisville & Nashville Railroad Company. The exact amount of reparation due can not be determined on the record and complainant should prepare a statement showing the details of the shipments in accordance with rule V of the Rules of Practice, which statement should be submitted to the Louisville & Nashville Railroad Company for verification. Upon receipt of a statement so prepared and verified, we will consider the entry of an order awarding reparation. The outstanding undercharges should be collected. As the rates herein found reasonable are now in effect, no order for the future is necessary.

INVESTIGATION AND SUSPENSION DOCKET No. 940.
CONCENTRATED COTTON ROUTING.

Submitted March 30, 1917. Decided May 12, 1917.

Proposed change in tariff rule by which the shipper's present right to control terminal routing is to be accorded in future only upon payment of a higher through rate found not justified, and the schedules under suspension directed to be canceled.

Henry G. Herbel and *Fred G. Wright* for respondents.

Edward Gottschalk, *John Monteath*, *M. W. Martin*, and *W. M. Taylor* for protestants.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

A tariff of the Missouri Pacific Railway and the St. Louis, Iron Mountain & Southern Railway permits cotton and cotton linters to be shipped inbound to compress points on their lines and reshipped after compression to manufacturing points or ports of export at the through rate from point of production to final destination, subject to shippers' instructions as to terminal delivery. The tariff provides that intermediate routing shall be subject to the direction of the outbound carrier from the compress point. By schedules filed to take effect September 30, 1916, respondents propose to accord the shipper a continuation of the present arrangement as to concentration and through rate, provided he waives to the carrier the right to control the complete routing, but to assess a higher through rate if he chooses to reserve to himself the privilege of designating the terminal line at destination. For example, the present rate on a shipment of cotton from Arkadelphia, Ark., to Providence, R. I., reshipped from Little Rock, Ark., after inbound shipment to and compression at that point, is 91.5 cents per 100 pounds, and this would also be the rate under the proposed tariff on a shipment which the outbound carrier from the compress point was permitted to route; but the rate would be increased to $1.06½ should the shipper elect to exercise the right of routing. Upon protests by the Lesser-Goldman Cotton Company of St. Louis, Mo., Alexander Eccles & Company, and the Pine Bluff Traffic Bureau, of Little Rock, the proposed schedules were suspended until July 28, 1917.

The reasons offered by the respondents for the proposed change have to do principally with the retaining to themselves of the fullest use of their equipment and the securing to themselves of the

long haul and the proper balancing of the equipment interchange between themselves and their connecting lines.

The latter situation is illustrated by the respondents in this way: Should the Baltimore & Ohio deliver southbound to them at their important gateway, East St. Louis, Ill., 50 empty and 150 loaded cars, and should the Big Four deliver southbound to them at that point 100 empty and 300 loaded cars, the respondents would aim, with a northbound load of, say, 100 cars, to deliver to the lines referred to, in their respective proportions of total deliveries to them southbound, 33 cars to the Baltimore & Ohio and 67 cars to the Big Four. It is stated that this policy might be seriously interfered with by the extension to the shipper of the right to control the routing of his traffic.

Another suggestion is that one of the lines that might be chosen as a route participant by the shipper might be laboring under stress of an embargo which would require the respondents to retain shipments temporarily to their own rails and to pay per diem charges on the cars to other lines in such amounts as to affect materially their profits on the transportation, whereas the traffic could be forwarded over other lines, in relief of the congestion, were the shipper not accorded the right to route his shipments.

Another situation affects shipments to New Orleans, La., many of which are for export. It is the assertion of the respondents that they can make practically all deliveries desired by cotton shippers at New Orleans, and that they should therefore be permitted to control and receive the long haul on shipments to that point and be accorded the opportunity thereby to retain to themselves the use of their empty equipment for return loading of sugar, rice, and other commodities.

It is the contention of the respondents that the proposed change in their tariff would not have the effect of denying to the shipper the right to control the routing of his traffic but only of offering him the choice of two rates, dependent in their respective application on whether he or the carrier routed his shipments, upon the same principle that passengers are given their choice of the usual or extra fare trains, or shippers their choice of two rates with differing minima.

Aside from the merits of the contentions urged in support of the proposed change, even assuming the contentions to be adequate if well founded in actual fact, we are not convinced of their persuasiveness upon the facts here shown. On the New Orleans shipments the protestants have no objection to the Iron Mountain receiving the long haul provided it makes satisfactory tariff arrangement for the delivery desired without added expense to the shipper.

Nor have the respondents satisfactorily established the fact of any hurtful congestion, or restriction upon equipment use or inter-

change, or deprivation of long haul, by reason of the operation of the present rule. The only specific reference to any of these apprehended effects is a general reference to certain shipments of cotton which were required, for reasons not definitely stated, to be held recently by the respondents in one of their depot yards.

The testimony makes clear that it is of great importance to the shipper of cotton that he be not deprived of the right of designating the terminal line. At some of the eastern spinning points there are two or more delivering lines, and if the consignee is served by only one of them a shipment delivered at that point by another line, even at a common rate to the city proper, would have to be switched to the industry at additional expense. The reservation of the right to the shipper to control terminal routing is said to be very important in case of export shipments.

Upon the whole, we conclude that the proposed tariff change has not been justified.

Mention should be made of another contention of the protestants, which is beside the issue here presented—that the right to control routing should be reserved to the shipper because frequently cotton is sold en route, and for reconsignment purposes the intermediate whereabouts of the shipment must be known. This contention is apparently based largely upon a reference to the control of intermediate as well as terminal routing, which is not here involved, inasmuch as the present rule gives to the shipper no control over intermediate routing and the proposed rule takes from him no such control. Nevertheless, the protestants are contending that they should have the right in future to control the intermediate routing as they have done in the past.

The protestants suggest that the respondents provided by tariff that they should have control over intermediate routing merely as a safeguard against unreasonable routing by the shipper, and that when the routing of the shipper was reasonable the rule was waived. We need only suggest that all tariff provisions should be free from conflict with provisions of the act and be strictly observed by carrier and shipper so long as they remain in effect. This is a requirement of section 6 of the act made in order to prevent discriminations.

An order will be entered requiring that the schedules under suspension herein be canceled.

No. 7369.[1]

INDEPENDENT ICE, FEED & FUEL COMPANY ET AL.

v.

SAN PEDRO, LOS ANGELES & SALT LAKE RAILROAD COMPANY ET AL.

Submitted October 30, 1916. Decided May 17, 1917.

1. The present rate of $5.65 per net ton on coal in carloads from the Castle Gate rate group of Utah and the Rock Springs district of Wyoming to points in southern California, including Los Angeles, has not been shown to be unreasonable.
2. On lump coal in carloads from mines in New Mexico to points in southern California, including Los Angeles, a rate of $5.15 per net ton is found to be a reasonable maximum rate for the future. Reparation denied.

Byron Waters, Holcomb & Coy, George H. Johnson, O. T. Helpling, and *P. H. Campbell* for complainants.

C. W. Durbrow, F. H. Wood, T. J. Norton, E. W. Camp, A. S. Halsted, James E. Kelby, and *W. F. Lincoln* for defendants.

REPORT OF THE COMMISSION.

HARLAN, *Commissioner:*

The three complaints here under consideration, which were consolidated and heard upon one record, bring in issue the rate adjustment on lump coal from Gallup, in the state of New Mexico, from the Castle Gate rate group, in the state of Utah, and from the Rock Springs district, in the state of Wyoming, to Los Angeles and other points in southern California.

Although two of the complaints when filed were addressed only to the rates in effect prior to July 15, 1915, they were subsequently amended to conform to the third complaint, which was filed later and assails not only the present carload rate of $5.65 per net ton from all the coal fields to all of the destinations involved, but also the rates in effect prior to July 15, 1915, of $5.15 to Los Angeles and $6.15 to other points in southern California. We are asked to establish for the future rates per net ton of $4 from Gallup and $4.75 from the Utah and Wyoming mines, and to award reparation. The complainants are coal dealers at the points of destination.

Los Angeles, a representative coal market, is 730 miles from Gallup, 817 miles from Castle Gate, and 1,012 miles from Rock Springs.

[1] The proceeding also embraces complaints in No. 8175, Byron T. Rowan et al. v. Atchison, Topeka & Santa Fe Railway Company et al.; and in No. 8789, Southern California Fuel Dealers' Association et al. v. Atchison, Topeka & Santa Fe Railway Company.

Naturally the basic rate is that maintained under more favorable transportation conditions from the less distant mines at Gallup; and according to the evidence the same rate is maintained for the longer hauls over the Sierra Nevada range from Castle Gate and Rock Springs, not because higher rates are not justified by that difference in the transportation conditions from the latter mines but for the reason that coal will not move from those mines to southern California at rates higher than are contemporaneously maintained from the less distant and more favorably located mines at Gallup.

The voluntary establishment by the defendants, on July 15, 1915, of the present $5.65 rate was the outgrowth of our refusal to permit the Santa Fe to maintain from Gallup to points intermediate to Los Angeles the former rate of $6.15 and at the same time to exact on traffic to Los Angeles the lower rate of $5.15. Although, in respect of these New Mexico mines, the former rates were applicable only from Gallup and Defiance, the new rate of $5.65 was established under a somewhat broader grouping than formerly prevailed, both as to points of origin and points of destination, being extended to mines in the vicinity of Los Cerrillos, a point north of Albuquerque, in the state of New Mexico, and approximately 200 miles east of Gallup, and also to all of the destination points in southern California, including Los Angeles.

In urging for the future a $4 rate from Gallup to these California points, the complainants draw attention to the rates on coal from Gallup to points in Arizona approved in *Arizona Corporation Commission* v. *A., T. & S. F. Ry. Co.*, 28 I. C. C., 428. In that case maximum rates were prescribed on both lump and slack coal, but since slack coal is generally used for steaming purposes, and in California coal is used chiefly as stove fuel for domestic use, further reference to the slack coal rates, which are on a level somewhat lower than the lump coal rates, will not be helpful. The maximum lump coal rates prescribed in that case and the revenue yield per car-mile and per ton-mile are shown in the subjoined table:

From Gallup to—	Miles.	Rates per short ton.	Revenue per car-mile.[1]	Revenue per ton-mile.[1]
		Cents.	*Cents.*	*Mills.*
Winslow	128	230	56.6	17.97
Flagstaff	186	250	42.3	13.44
Williams	220	275	39.4	12.50
Ashfork	243	290	37.6	11.93
Seligman	271	305	35.5	11.25
Kingman	356	320	28.3	8.99
Topock	407	330	25.5	8.11
Phoenix	437	330	23.8	7.55
Parker	484	370	24.1	7.64
Bowie	453	400	27.8	8.83
Tucson	568	450	25.0	7.92
Maricopa	654	475	22.9	7.26
Yuma	819	500	19.2	6.11

[1] Based upon the actual movement during the year ending June 30, 1915, of 3,343 cars, aggregating 105,469 tons, or an average loading per car of 31.5 tons. From the record it appears that this movement may include both slack and lump coal.

While through New Mexico, Arizona, and southern California the conditions of transportation are generally quite similar, there nevertheless are marked differences in the character of the coal movement. From the New Mexico mines to Arizona the movement consists largely of slack coal in open cars in trainload lots, while to the California destinations the movement is in single-car lots and consists chiefly of lump coal, which the shippers require to be transported in box cars, thus necessitating an extensive empty box-car movement to the mines. On the California traffic there is also some additional expense to the carriers for special car-door protection similar to grain doors, and in cleaning the cars for merchandise after having once been loaded with coal. These conditions justify somewhat higher rates for the longer haul from the New Mexico mines to California than are contemporaneously charged from the same originating mines to Arizona.

The material contentions of the defendant carriers are: (*a*) That the former rate of $5.15 to Los Angeles was compelled by water competition and therefore depressed below a reasonable standard; (*b*) that the former rate of $6.15 maintained for a number of years to California points, other than Los Angeles, was not unreasonably high and that coal moved freely under it; (*c*) that the present rate of $5.65 to all California points is not unreasonably high considering the fact that it is applicable over several routes from the mining districts in three different states, and is a blanket rate covering large groups in both originating and destination territories; (*d*) that the complainants have no competition to meet with coal paying lower freight rates; and (*e*) that since coal is used in California only as a domestic fuel, and not for generating steam, it comes into commercial competition only with gas, wood, and briquettes.

The bulk of the coal traffic from the New Mexico mines involves only a single-line haul over the rails of the Santa Fe, it being shown of record that during the year ending June 30, 1915, some 2,249 carloads, aggregating 63,725 tons, were carried by that line from Gallup to California destinations. These figures indicate an average loading of 28.3 tons per car, and on the basis of that average the present rate of $5.65, for the average distance of 804 miles from all points of destination to all points of origin, yields a revenue per car-mile of nearly 20 cents and per ton-mile of 7 mills. Using the same averages with respect both to loading and distance, the $5.15 rate, which formerly was applied only to Los Angeles, would yield a car-mile revenue of slightly more than 18 cents, and a ton-mile revenue of 6.4 mills. But since the principal mines from which most of the coal moves are at Gallup, and the average distance from that point to all the California destinations involved is only 696 miles, the revenue yield, in a practical sense, would be nearer 20.9 cents

per car-mile, and 7.4 mills per ton-mile. In *Consolidated Fuel Co.* v. *A., T. & S. F. Ry. Co.*, 38 I. C. C., 474, we found $5.65 to be a reasonable maximum rate for a three-line haul of 721 miles from certain mines in Utah to Santa Ana, a point in the state of California on the Santa Fe near Los Angeles. Ordinarily the rate for a one-line haul should be lower than the rate over a three-line route. As before explained, the bulk of the coal traffic from New Mexico to California originates at Gallup and involves only a single-line haul over the rails of the Santa Fe.

The record is somewhat voluminous and all the facts disclosed upon it have been carefully examined. The more important phases of the case have been explained and, without extending this report into further details appearing of record, it will suffice to say that upon a full consideration of all the evidence before us, we find and conclude that for the future a reasonable maximum rate on lump coal in carloads from the New Mexico mines, as at present grouped, to the California destinations involved in the complaints will be $5.15 per net ton. This rate, however, will not include compensation to the carriers for furnishing special car-door protection, similar to grain doors. For that service a separate charge, commensurate with its cost, may be established. In view of the longer hauls over two or more lines and the more adverse operating conditions over the Sierra Nevada range, we are further of the opinion and find, upon the evidence adduced of record, that the rate of $5.65 from the mines in Utah and Wyoming to points in California has not been shown to be unreasonable. The complaints in respect of that rate will therefore be dismissed.

As previously stated, the rates formerly in effect from the New Mexico mines, of $5.15 to Los Angeles and $6.15 to other points of destination, were voluntarily changed by the carriers to the basis of $5.65. That adjustment, involving several originating districts, broadened the groups, and affected a number of carriers, shippers, consignees, and a large destination territory. The only change here made is in the amount of the rate. Following the principle announced in *Anadarko Cotton Oil Co.* v. *A., T. & S. F. Ry. Co.*, 20 I. C. C., 43; *Boardman Co.* v. *S. P. Co.*, 37 I. C. C., 81, 87, and other cases involving claims for reparation in connection with general rate adjustments, all claims herein for reparation will be denied. An appropriate order will be entered.

UNREPEATED MESSAGE CASE.

No. 8917.

J. L. CULTRA AND MYRTLE CULTRA, PARTNERS, TRADING AS THE CLAY COUNTY PRODUCE COMPANY,

v.

WESTERN UNION TELEGRAPH COMPANY.

Submitted April 12, 1917. Decided May 17, 1917.

1. Although certain of its provisions are inapplicable, the general principles of the act to regulate commerce, as amended, together with many of its details, extend to telephone and telegraph companies engaged in the transmission of interstate messages.
2. The defendant's repeated, unrepeated, and special value rates for the transmission of interstate messages, with the restricted liability attaching thereto, being expressly sanctioned by section 1 of the act to regulate commerce, are binding upon it as well as upon all others when such rates have been lawfully fixed and offered to the public, and may not be departed from until they have lawfully been changed.
3. The defendant's unrepeated rate and the restriction attached thereto not shown to be unreasonable, and the complaint dismissed.

Hal R. Lebrecht and *A. J. Bolinger* for complainants.

Rush Taggart, *Albert T. Benedict*, and *Francis Raymond Stark* for defendant.

REPORT OF THE COMMISSION.

HARLAN, *Commissioner:*

On March 21, 1914, Rodenberger & Company, commission merchants at San Francisco, deposited in the office of the defendant in that city a telegram properly addressed to the complainants at Clay Center, in the state of Kansas, advising them of the condition of the San Francisco market for poultry and kindred products. As the message reached the complainants at Clay Center, the part in which we are interested here, through an error by the defendant, was made to read as follows: "Have sold car which you shipped." As accepted by the defendant at its San Francisco office for transmission that part of the message had read: "Haven't sold car which you shipped."

The conditions existing for some time at the San Francisco poultry market had led to a definite understanding between the complainants and their San Francisco brokers that the complainants would not make a further shipment until advised that the last preceding carload

had been sold; with advice to that effect at hand, it was the understanding that the complainants might then let another carload go forward. In accordance with this understanding the complainants, upon receiving the message erroneously indicating that a previously shipped carload had been sold, permitted another carload then in transit to continue on its journey to the San Francisco market. On this shipment a loss of $1,790.83 was sustained, the direct result, as the complainants allege, of the defendant's error in transmitting the message.

To recover damages for the loss so incurred the complainants brought their action against the defendant in the circuit court of Jackson county, in the state of Missouri. The defense there interposed by the telegraph company was (*a*) that the court, by the terms of the contract under which the message was sent, was limited to an award of nominal damages only, even though the loss claimed was shown to have resulted from the defendant's negligence in forwarding the message; and (*b*) that the validity of the provisions in the contract restricting the defendant's liability to nominal damages was not within the competency of the state court to deny, but was a federal question which the Interstate Commerce Commission alone was authorized by law to consider and deal with. In the light of that contention the trial court is holding the case in abeyance pending a ruling by this Commission. The questions presented for our consideration, as stated by the complainants, are in substance as follows: (*a*) Whether the Congress, by the act of June 18, 1910, amending the act to regulate commerce, has vested in this Commission such jurisdiction over the rates and practices of telegraph companies as to bring under our control and within our regulating power the rules of such companies concerning their liability for damages incurred by reason of error or delay in the transmission or delivery of interstate messages; and (*b*) whether, if the Commission has such jurisdiction, the present rules of the defendant telegraph company, with respect to these matters, are reasonable and, as the complainants put the inquiry, whether they are consistent with a sound public policy.

To enable us to dispose of these important contentions with a minimum expenditure of time and effort the facts in the case were agreed to by the parties and submitted upon stipulation. The questions involved are of first impression with this Commission, but before undertaking to discuss them there are one or two other agreed facts that should first be understood because of their direct bearing upon the controversy:

The message, in the transmission of which the error complained of was made by the defendant, was a so-called night letter telegram,

upon which the complainants' brokers at San Francisco paid the charges regularly fixed and established by the defendant for an unrepeated night letter between the points in question. It was sent by the San Francisco brokers in answer to a telegraphic inquiry by the complainants and was offered to the defendant for transmission upon a telegraph blank bearing upon its face in clear, bold type this legend:

Send the following night letter subject to the terms on the back hereof, which are hereby agreed to.

On the back of the blank it was again noted in equally bold type that all night messages were subject to the terms there set forth at length. This was followed by a clause providing for the application of the standard 10-word day rate to a night letter of 50 words or less. Then followed certain other provisions[1] which have always been interpreted by the defendant as limiting its liability, for such an error in the transmission of an unrepeated message as was made in this instance, to the nominal sum of $50 as a maximum, together with the return of the toll paid upon the message. That was its contention in the trial court, as before stated, and the same defense is made here. Apparently the complainants do not deny that this was the intended purpose and meaning of those provisions, or that the different charges for repeated and unrepeated messages, with the restricted liability attached to them, had long been in effect; but they contend as a matter of law that the restrictive provisions have no validity or legal force. They assert that the defendant must therefore respond in damages in their action in the state courts without regard to those provisions and that the Commission has no jurisdiction in the premises. We are thus brought to a consideration of that question.

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[1] The provisions, so far as they pertain to the matters in controversy, read, with capitals and italics as they appear on the blank form, as follows:

To guard against mistakes or delays, the sender of a night letter should order it REPEATED, that is, telegraphed back to the originating office for comparison. For this, one-half the unrepeated night letter rate is charged in addition. Unless otherwise indicated on its face, THIS IS AN UNREPEATED NIGHT LETTER AND PAID FOR AS SUCH, in consideration whereof it is agreed between the sender of the night letter and this Company as follows:

1. The Company shall not be liable for the mistakes or delays in the transmission or delivery, or for non-delivery, of any UNREPEATED night letter, beyond the amount received for sending the same; nor for mistakes or delays in the transmission or delivery, or for non-delivery, of any REPEATED night letter, beyond fifty times the sum received for sending the same, *unless specially valued;* nor in any case for delays arising from unavoidable interruption in the working of its lines; *nor for errors in obscure night letters.*

2. In any event the Company shall not be liable for damages for any mistakes or delay in the transmission or delivery, or for the non-delivery, of this night letter, whether caused by the negligence of its servants or otherwise, beyond the sum of FIFTY DOLLARS, at which amount this night letter is hereby valued, unless a greater value is stated in writing hereon at the time the night letter is offered to the Company for transmission, and an additional sum paid or agreed to be paid based on such value equal to one-tenth of one per cent. thereof.

The act to regulate commerce was enacted on February 4, 1887, but it was not until the amendatory act of June 18, 1910, that telegraph and telephone companies were subjected to its provisions and declared to be common carriers within the meaning and purpose of the act. By that amendment jurisdiction over the rates and charges of such companies was conferred upon the Commission, accompanied by the declaration that all such rates and charges must be reasonable and that any unjust rate or charge is unlawful. But the legislation by which these results were accomplished requires a somewhat careful examination. Section 15 of the act, as then amended, authorizes the Commission in express language to hear complaints respecting rates and charges "for the transmission of messages by telegraph and telephone" and to hear complaints respecting "classifications, regulations, or practices whatsoever" of any carrier subject to the act. Under these provisions the Commission has entertained and heard complaints against telegraph and telephone companies and has made findings and entered orders requiring the correction of unlawful discriminations and preferences and enforcing, in their charges and practices, the standard of reasonableness ordained in section 1 of the act. By appropriate language section 15 also provides that after the Commission has fixed the just and reasonable maximum rate or charge that may lawfully be exacted for the future by the carrier complained of, the latter shall not "demand or collect any rate or charge for such transmission in excess of the maximum rate or charge so prescribed"; it requires the carrier also to adopt, conform to, and observe, for the future, the regulations and practices prescribed by the Commission as just, fair, and reasonable. It will thus be seen that the control of the Commission, after full hearing upon complaint, over the rates, charges, and practices of telephone and telegraph companies is and has been regarded, by the Commission and by the parties before us in those cases, as being almost as complete and comprehensive as it is over the rates and practices of the several other classes of carriers that are subject to our jurisdiction. In other words, no embarrassment or difficulty has been found in applying the general provisions of the act, as well as many of its details, to common carriers serving the public in the transmission of messages over telephone and telegraph lines between interstate points. Under section 20 we have also prescribed systems of accounts for interstate telegraph and telephone companies, which all such companies are now observing; under the provisions of that section they also file annual and other reports with this Commission.

But some of the provisions of the act, notably sections 2 and 4, that were neither modified nor amplified but were left unchanged

by the amendatory legislation in question, have been found inapplicable in their present form to telephone and telegraph companies. Section 6 is also inapplicable, in large part at least. It deals with the form and manner of filing, publishing, and posting the rates, charges, rules, and regulations of common carriers; but on its face section 6 relates only to carriers engaged or participating "in the transportation of passengers or property." Its terms are too definite to permit us to extend their application by construction to telephone and telegraph companies; and, although the rates, charges, rules, and regulations of such companies may be stated more briefly perhaps, and with less expense, than the rates and regulations of any other class of carriers under our jurisdiction, we have not felt, as stated in our annual reports to the Congress for 1911 and subsequent years, that authority has been given to the Commission under section 6 to require such companies to comply with its provisions when fixing and establishing their rates and charges. The particular defendant here, the Western Union Telegraph Company, has nevertheless voluntarily filed with the Commission its tariff book containing the bases of its rates and charges, as well as its rules, regulations, blanks, and other matters relating to the service it undertakes to perform for the public; but, so far as the specific requirements of section 6 are concerned, the rates, charges, rules, and regulations of telephone and telegraph companies may be and customarily are established and offered to the public without first being published and posted with the Commission, a procedure that must be observed by all other carriers under our jurisdiction before they may lawfully offer their services to the public or legally effect changes in their rates and practices.

Under the act, as has many times been said, the right to initiate their rates rests with the carriers. As section 6 does not apply to telephone and telegraph companies, it may well be said that in a special sense and to a special extent such companies do initiate their charges. But it has not been thought or even suggested that a telephone or telegraph company, after having fixed and established a charge for a particular service, or a regulation pertaining to or affecting the rate or service, may depart from the charge, or from the regulation affecting the charge, at its discretion or until the charge or regulation has been lawfully changed by it. The courts have often said that the vital feature of the act to regulate commerce is to secure equality and uniformity as to all persons availing themselves of the services of common carriers and to destroy any favoritism by such carriers among those requiring their services. This principle, founded in common right as well as in common justice, runs all through the act and through the supplementary legislation enacted in aid of the

enforcement of the act. It can not therefore be doubted, and indeed the complainants here do not contend to the contrary, that even though section 6 is inapplicable to telephone and telegraph companies, their rates and charges are nevertheless binding upon such companies, when they have lawfully been fixed and offered to the public; and the rates and charges must be observed, together with the rules and practices affecting the rates and charges, until they have lawfully been changed, either voluntarily or under the orders of this Commission. Having been declared to be common carriers, and having been subjected to the general provisions of the act, it is manifest that telephone and telegraph companies may not lawfully accept or exact of one person either less or more than they demand of another person for the same service. To secure such uniformity in their dealing with the public was doubtless one of the purposes of the Congress in subjecting telephone and telegraph companies to the provisions of the act to regulate commerce; and we think the language used by the Congress in doing this was sufficient to accomplish the end sought. It is scarcely necessary to add that there can be no uniformity in the application of the rates and charges of such companies unless rules and regulations like those here under consideration, that directly affect the rates, are also enforced without discrimination or preference.

Almost from the beginning of telegraphy in this country the basic rate has been that charged for the transmission of an unrepeated message, the rates for repeated and special value messages being built upon it. The unrepeated rate or charge has always been made upon the condition, stated in the contract between the sender and the company, that no liability should attach to the company for errors in transmission or delays in delivery beyond the sum received for sending the message. The higher rate for repeated messages, concurrently maintained for many years with the unrepeated rate, is predicated in part upon the additional service performed, and in part upon the liability of the defendant to make good any damages incurred, through error or delay in the transmission or delivery of the message, to the extent of fifty times the rate charged, with a maximum of $50. For a long time also the defendant has maintained still higher charges under which, upon the payment of one-tenth of 1 per cent of the amount of the assurance desired, the defendant, within the value so placed upon the message, assumes liability to the full extent of the loss sustained. The fundamental difference between the unrepeated rate and the other two classes of rates is that under the former the sender assumes the risk of error or delay, while under the latter the carrier assumes the risk in part or entirely, as the case may be; and the rules fixing the measure of

the defendant's liability under these several classes of rates are essentially a part of the rates themselves.

The complainants contend that rates, and rules of this kind affecting the rates, that limit the liability of a telegraph company for error in transmission are unreasonable, because it is the duty of such a carrier, under the charges paid to it, to transmit all messages correctly. This theory assumes that the rate for an unrepeated message must necessarily embrace the obligation to transmit it correctly and to respond in damages for the failure to do so. On that point in *Primrose* v. *Western Union Telegraph Co.*, 154 U. S., 1, 25, it is said:

> The fallacy in that reasoning appears to us to be in the assumption that the company, under its admitted power to fix a reasonable rate of compensation, establishes the usual rate as the compensation for the duty of transmitting any message whatever. Whereas, what the company has done is to fix that rate for those messages only which are transmitted at the risk of the sender and to require payment of the higher rate of half as much again if the company is to be liable for mistakes or delays in the transmission or delivery, or in the nondelivery of a message.

The complainants urge, however, that, unlike a shipment of goods or express matter, a telegraph message in itself has no intrinsic value, and that any value placed upon it by the sender before a loss results from an error in its transmission or delay in its delivery can not be other than an arbitrary value. There is undoubted force in that view. But, on the other hand, the sender may more nearly estimate the possible damage in the case of error in transmission or delay in delivery than can the telegraph company. The sender of a telegram occupies much the same position as the consignor of an express package. In neither case is the value of that which is offered for transmission or transportation known to the carrier. In the case of a telegram, if the carrier is to assume the same degree of risk that is assumed by the express company under similar circumstances, the rate demanded is the repeated message rate, under which the liability of the carrier is limited to the sum of $50, unless a greater value is declared. For a greater value an additional charge must be paid. The same limitation of value is observed in the form of express receipt prescribed in *Express Rates, Practices, Accounts, and Revenues*, 28 I. C. C., 131, 137, where it is said:

> The classification prescribed provides for valuation charges upon articles of higher value. In the case of shipments of extraordinary value, not only is the carrier entitled to notice of such value in order that its care may be increased, but it is also entitled to extra compensation for the increased liability and care.

As before stated, the charge established by the defendant for the transmission of messages valued at more than $50 is one-tenth of 1 per cent of the excess value in addition to the repeated message rate.

This special charge is the same as that found reasonable by us for a like liability in the transportation of express packages and is the usual insurance charge on shipments conveyed by parcel-carrying systems in other countries. *In re Express Rates, Practices, Accounts, and Revenues*, 24 I. C. C., 380, 397.

As has been said, the complainants cite many cases in which restrictions upon the liability of this defendant under its several classes of rates have been considered and the restrictions are variously referred to as unjust, unconscionable, without consideration, utterly void, or as being contrary to sound public policy. We are asked by the complainants to announce the latter principle in this case. On the other hand, the defendant cites an equal number of cases in which courts of great authority have upheld the restrictive rates. We shall not undertake to review any of these cases here. It will suffice to say that, apart from the federal legislation now under consideration, the complainant's action, if brought in some state courts would apparently meet with success, while if laid in the courts of other states would result in failure. This lack of uniformity among the courts, when dealing with the defendant's rates and the rules and regulations affecting its rates for the transmission of interstate messages, to some extent may explain the legislation by which the Congress has put all telephone and telegraph companies engaged in the interstate transmission of messages under our jurisdiction. But whatever may have occasioned the amendatory legislation, one of its necessary consequences, under the language used, has been to put an end to this diversity in results; so that, as will be seen further along in this report, the charge as fixed and offered to the public by the defendant for transmitting an interstate message may no longer involve any greater or less liability in one forum than it does in another, but must be construed as attaching to the defendant's error the same degree of responsibility in all the courts.

The complainants, however, direct attention to the so-called Carmack amendment, which was a part of section 20 of the act to regulate commerce when the night message described of record was sent. That amendment, however, relates to the liability for loss, damage, or injury to property in transit caused "by any common carrier, railroad, or transportation company, to which such property may be delivered" for carriage, and is therefore another provision in the act that is inapplicable to telephone and telegraph companies. Largely on the omission there of any reference to carriers of this class, the complainants base their contention that the Commission is without jurisdiction to deal with the matters involved in this case but must leave them to the courts to adjust. The point they make is that as the

Congress "has not seen fit to regulate the liabilities of telegraph companies to respond in damages for carelessly transmitting interstate messages * * * the law of the sovereign state is still in force"; and they ask the Commission so to declare in order that they may proceed with their action for damages in the state court. But the silence of the Carmack amendment with respect to telegraph companies and their liability for errors in the transmission of interstate telegraph messages can not be controlling with respect to our jurisdiction, if under other provisions of the act the matters in controversy here are brought within our cognizance. This we think is the case.

In extending the provisions of the act to telephone and telegraph companies, the Congress further amended section 1 by incorporating in it a clause reading as follows:

> That messages by telegraph, telephone, or cable, subject to the provisions of this act, may be classified into day, night, repeated, unrepeated, letter, commercial, press, government, and such other classes as are just and reasonable, and different rates may be charged for the different classes of messages.

If, as a matter of law, as the complainants contend, the rate charged and collected for an unrepeated message carries with it the same protection to the sender or recipient and imposes upon the telegraph company the same liability and degree of care as the rate for a repeated message, then the express authority by the Congress to maintain classifications of repeated and unrepeated messages, with the different rates attached thereto, is without significance or effect; for no useful purpose would have been served in authorizing the two classifications taking different rates without recognizing the fundamental difference between them that for years has been well understood and maintained. It seems clear, therefore, that the Congress in recognizing, by the amendment to the act above quoted, these three classes of messages with the different charges attached, has also recognized a distinction in the defendant's liability under them, and has sanctioned this distinction for the future, subject of course to the general provisions in the act requiring all rates, and all rules and regulations affecting rates, to be reasonable and uniform in their application, under like circumstances, for the different kinds of service offered. Such classification of its messages, with the different rates and liabilities attaching to them, having affirmative recognition in the act itself, it follows that when lawfully fixed and offered to the public they are binding upon the defendant, and upon all those who avail themselves of its services, until they have been lawfully changed. Abundant authority for this view is found in numerous decisions by

the state and federal courts. In *Boyce* v. *Western Union Telegraph Co.*, 89 S. E. (Va.), 106, 108, it is said:

* * * Congress, by the act of June 18, 1910, seems to recognize the necessity and validity of such stipulations and to authorize the making of such contracts with respect to repeated and unrepeated messages.

* * * So that telegraph companies have here the direct authority and sanction of Congress to classify their messages into repeated and unrepeated and to charge different rates for each; in other words, to enter into the very contract which was made in this case.

See also, to the same effect, *Western Union Telegraph Co.* v. *Dant*, 42 App. D. C., 398; *Western Union Telegraph Co.* v. *Bank of Spencer*, 156 Pac. (Okla.), 1175, 1179; and *Haskell Implement & S. Co.* v. *Postal Telegraph-Cable Co.*, 96 Atl. (Me.), 219, 223. In the latter case it was held by the supreme judicial court of the state of Maine that, so far as interstate messages are concerned, the state courts have no jurisdiction over questions of classification and regulation, or respecting the reasonableness of rules and charges or the limitation of the carrier's liability, and that such cases must—

be submitted for the determination of the Interstate Commerce Commission, as in the case of other common carriers coming within the administrative competence of that Commission.

Our conclusion upon the record is that the Congress, by the language used in the amendatory act of 1910, has manifested a definite intention to place under the jurisdiction and control of this Commission the rates and practices of interstate telegraph companies, as well as the rules, regulations, conditions, and restrictions affecting their interstate rates; that the rate voluntarily used by the senders of the message in question was an unrepeated rate to which was lawfully attached, as a fundamental feature of it, the restricted liability insisted upon here by the defendant; that the Congress has expressly authorized such rates with a restricted liability attached; that such rates are not therefore contrary to public policy but on the contrary are binding upon all until lawfully changed; and that neither the interstate rates of the defendant nor the rules, practices, conditions, and restrictions affecting those rates have been shown in this proceeding to be unreasonable or otherwise unlawful.

The complaint must therefore be dismissed, and it will be so ordered.

No. 8975.[1]

THE ALASKA INVESTIGATION.

Submitted March 13, 1917. Decided May 17, 1917.

Respondents' rates, regulations, and practices governing transportation between points within Alaska and between points in the United States and points in Alaska not found to be unreasonable. Special contract rates accorded cannery and mining companies on through rail-and-water shipments from points in the United States to points in Alaska found unjustly discriminatory. Allegations concerning the payment of rebates and the ownership by respondent railroads or their interest in mines or in minerals which they transport not sustained.

James Wickersham for complainants.

Lloyd S. Ackerman for Valdez Dock Company and with *William H. Gorham* for Northern Navigation Company and Northern Commercial Company.

O. E. Harrison and *William H. Gorham* for Pacific & Arctic Railway & Navigation Company, British Columbia-Yukon Railway Company, British-Yukon Navigation Company, Limited, and American-Yukon Navigation Company.

W. H. Bogle, *Carroll B. Graves*, *F. T. Merritt*, and *Lawrence Bogle* for Kennecott Copper Corporation, Copper River & Northwestern Railway Company, and Alaska Steamship Company.

Benjamin S. Grosscup and *W. Carr Morrow* for Pacific Coast Steamship Company, Pacific Alaska Navigation Company, and with *W. B. Stratton* for Pacific Coast Company.

W. H. Hayden and *F. A. Huffer* for Border Line Transportation Company.

Charles F. Munday and *John Rustgard* for Humboldt Steamship Company.

W. B. Stratton for Pacific Coast Company.

O. P. Hubbard for merchants of Valdez, Alaska.

H. L. Faulkner for Skagway Commercial Club.

C. J. France for port of Seattle.

Report of the Commission.

Clark, *Commissioner:*

On June 5, 1916, the Samson Hardware Company, a corporation dealing in hardware and mining machinery at Fairbanks, Alaska, and James Wickersham, a resident of Fairbanks, filed a formal com-

[1] The proceeding also embraces complaint in No. 8976, Samson Hardware Company et al. v. Pacific & Arctic Railway & Navigation Company et al.

plaint, No. 8976, attacking the rates and practices of certain transportation, wharfage, mining, and mercantile companies governing the transportation of persons and property between points in Alaska and between points in the state of Washington and points in Alaska. It was alleged in substance that the rates and fares charged for such transportation were grossly unjust, unreasonable, and discriminatory; that the traffic of certain large shippers engaged in mining and in mercantile enterprises in Alaska was transported by defendants for materially less than the legal tariff rates which they exacted from the general public; and that by means of unlawful combinations and conspiracies defendants had obtained a monopoly of the transportation, mining, and mercantile business of Alaska, thereby preventing or hindering the industrial development of that territory. Thereupon the Commission instituted on its own motion a general investigation of the rates, practices, rules, and regulations of the defendants and of other common carriers serving Alaska, governing transportation wholly by rail or partly by rail and partly by water between points in Alaska and between points in the United States and points in Alaska, and an inquiry into the ownership by respondent railroads or their interest in mines or in minerals which they transport. The two proceedings were consolidated; hearings were had at Cordova and Juneau, Alaska, Seattle, Wash., and Washington, D. C., and the respondents were required to submit full information concerning the matters and things involved. No witness appeared on behalf of the Samson Hardware Company, the principal complainant. The record consists largely of the evidence offered by respondents in connection with the general investigation.

Prior to the discoveries of gold along the Yukon and tributary rivers, transportation within Alaska or between points in the United States and points in Alaska was an industry of negligible proportions. A few steamers and sailing vessels, operated irregularly under charter, sufficed to accommodate the small amount of traffic offered, consisting principally of military supplies, supplies for trading posts and fisheries, and outbound cargoes of furs and fish. Since then the business of transportation has grown in importance, keeping pace with the increase in population and the development of the mining, fishing, and other industries. Alaska now has approximately 500 miles of railway in nine disconnected systems, regular steamship service during the season of navigation on its 5,000 miles of principal navigable rivers, and many steamship lines operate regularly on fixed schedules between its ports and the Pacific coast ports of the United States and Canada.

Although possessed of great natural resources, Alaska is still largely an undeveloped and sparsely inhabited region with but

little traffic in proportion to its area, which is about one-fifth that of the United States. Its climate and topography interpose many and peculiar obstacles to the construction, operation, and maintenance of transportation routes, and the conditions surrounding transportation are without exact counterpart in other parts of the United States. Coastwise navigation is rendered difficult and oftentimes perilous by violent storms, adverse tides, floating ice, and dense fogs; by narrow and tortuous channels which are inadequately buoyed and lighted; and by uncharted reefs and pinnacle rocks. The harbors as far west as Cook Inlet are open throughout the year, but those to the westward and the rivers which form practically the sole highways of interior communication are icebound except in summer. Transportation between the Pacific coast of the United States and the principal towns and settlements of the interior situated along the Yukon and tributary rivers involves an ocean and river voyage of several thousand miles by way of the Bering Sea or an intermediate inland movement over railroads, wagon roads, or trails which cross the lofty mountain ranges fringing the coast from British Columbia to the Alaska peninsula and connect the ice-free harbors of southern Alaska with the navigable waters of the Yukon basin. The rail portions of these inland routes are formed by the Alaska Northern Railway, the Copper River & Northwestern Railway, and the rail lines of the White Pass & Yukon Route, with southern termini at Seward, Cordova, and Skagway, respectively. The Alaska Northern Railway, which is owned by the United States, is not involved in this proceeding.

Traffic between points in the United States and points in Alaska usually moves through Seattle or other ports on Puget Sound, and by far the greater portion is an all-water business over which the Commission has no jurisdiction. Except that with points on the Copper River & Northwestern Railway practically all traffic with interior Alaska moves partly by rail and partly by water via Skagway or over the all-water route via St. Michael on Bering Sea. The steamship companies operating between Puget Sound and Alaska publish and file with this Commission proportional rates applicable to traffic handled in connection with rail lines. They are also parties to joint tariffs filed with us naming rates via Cordova and Skagway between points in interior Alaska and Seattle, San Francisco, and other Pacific coast ports. The respondent railroads in Alaska publish and file rates and fares applicable to all traffic which they transport.

RESPONDENTS' ROUTES DESCRIBED.

The Alaska Steamship Company, the Pacific Steamship Company, the Border Line Transportation Company, the Humboldt

Steamship Company, the Canadian Pacific Railway Company's steamship lines, and the Grand Trunk Pacific Steamship Company, Limited, serve southeastern Alaska, which embraces the coastal section between Dixon Entrance and Cape Spencer. Only the first-named two companies operate regularly to southwestern Alaska lying between Cape Spencer and Unimak Pass, and to western Alaska, which includes ports on Bristol Bay and Bering Sea. The Pacific Steamship Company, organized after these proceedings were instituted, is the successor in interest of respondents Pacific Coast Steamship Company and Pacific-Alaska Navigation Company, which, until November 1, 1916, operated over the routes now served by the Pacific Steamship Company. It and the Alaska Steamship Company have large and well-equipped fleets and are the principal ocean carriers serving Alaska. The vessels of the Pacific-Alaska Navigation Company, which, prior to 1914, was a nonoperating company, and those of the Pacific Coast Steamship Company, plied between Puget Sound and California as well as between Puget Sound and Alaska. The Border Line Transportation Company entered the Alaska trade in 1915 and operates between Puget Sound and British Columbia and Alaska. The Alaska Steamship Company and the Humboldt Steamship Company are engaged exclusively in the transportation of Alaska traffic.

The Copper River & Northwestern Railway extends from Cordova to Kennecott, Alaska, a distance of approximately 196 miles. Construction began in 1906, and the road was completed for operation in April, 1911. In the beginning an attempt was made to build a line northward from Valdez. Later, Katalla was selected as the southern terminus, but after large expenditures for line construction, terminal facilities, and harbor improvements, both projects were abandoned and the road was built from Cordova. The line follows the valleys of the Copper and Chitina rivers and for the greater part of the first 50 miles it is laid on level swampy ground, which required extensive filling. Excepting a comparatively few miles where its line rests on flats and dead glaciers, a great deal of heavy rock work was encountered in constructing the road. It is a standard-gauge well-built road with a number of tunnels and expensive steel bridges designed to acommodate the heaviest class of traffic. There are but few sharp curves and with two or three unimportant exceptions the maximum gradients do not exceed 1 per cent. It has an ample supply of motive power, cars, and work equipment, and terminal facilities at Cordova, which include a large and substantial wharf and a number of warehouses, shops, and other structures. A triweekly mixed freight and passenger train service is maintained and additional freight trains are operated as occasion requires.

The rail lines of the White Pass & Yukon Route extend from Skagway, on Lynn Canal, to White Horse, Yukon Territory, the head of navigation on the Yukon River, a distance of about 110 miles. Construction began in 1898, following the discovery of gold in the Klondyke region, and was completed in 1901. These are substantially built narrow-gauge lines, with many sharp curves and steep grades. Wharves, shops, warehouses, ore bunkers, and other terminal facilities are maintained at Skagway, and the lines are adequately equipped with rolling stock. In *Humboldt Steamship Company* v. *White Pass & Yukon Route*, 25 I. C. C., 136, the following description is given of the rail-and-water lines forming that route:

As shown in the title, complaint is against the White Pass & Yukon route, which consists of four separate and distinct corporations. It appears that the "White Pass & Yukon Route" is a trade name, and that there is no corporation of that name. This route is made up of the properties of (a) the Pacific & Arctic Railway & Navigation Company, a West Virginia corporation with head offices at Chicago, Ill., which owns 20 miles of railroad running from Skagway to White Pass, the boundary line between Alaska and British Columbia; (b) The British Columbia-Yukon Railway Company, incorporated under the laws of British Columbia, with principal offices at Victoria, B. C., which owns some 33 miles of road from White Pass to Pennington, the boundary line between British Columbia and Yukon Territory; (c) The British-Yukon Railway Company, incorporated under the laws of the Dominion of Canada with head offices at Ottawa, Canada, which owns the line of railroad from Pennington to White Horse; (d) The British-Yukon Navigation Company, Limited, incorporated under the laws of British Columbia, with head offices at Vancouver, B. C., which owns and operates steamboats between White Horse and Dawson, Yukon Territory, and between Caribou, Yukon Territory, and Atlin, B. C.

The property of the Pacific & Arctic Railway & Navigation Company is all in the Territory of Alaska. The property of the British-Columbia-Yukon Railway Company is all in British Columbia; that of the British-Yukon Railway Company is all in Yukon Territory; that of the British-Yukon Navigation Company is all in British Columbia and Yukon Territory.

There is a White Pass & Yukon Railway Company, Limited, of London, England, which is a holding company for the owners of the shares, bonds, and debentures of the several properties that make up the so-called White Pass & Yukon route.

While maintaining these separate corporate existences these companies are, for convenience and economy, operated under one management. The managing officers are separately elected by the several boards of directors of the constituent companies. The White Pass & Yukon Railway Company, Limited, of London, has no part in the operation or management of the properties.

There has been no subsequent change in the ownership or management of these lines.

The American-Yukon Navigation Company, a corporation organized under the laws of the state of West Virginia, owns and operates a line of steamers on the Yukon and tributary rivers between Dawson and St. Michael. While technically not a part of the White Pass &

Yukon Route, it is owned by the same interests, has the same general officers, and is under the same management and control. It owns a large number of steamers, barges, wharves, and other terminal facilities and maintains regular service during the season of navigation. It participates in joint all-water rates with the ocean steamship lines via St. Michael and also in joint rail-and-water rates via Skagway.

Other parties defendant and respondent are the Northern Navigation Company, which for several years operated a line of steamers on the Yukon and tributary rivers, but which since April, 1914, has not been engaged in transportation; the Valdez Dock Company, which owns and operates a wharf at Valdez; the Northern Commercial Company, which is engaged in the mercantile business at numerous points in interior Alaska; the Kennecott Copper Corporation, engaged in mining copper at Kennecott; and the Pacific Coast Company, a nonoperating holding company which owns the capital stock of the Pacific Coast Steamship Company and of certain railroads and coal mines in the United States.

ISSUES RAISED BY THE COMPLAINT AND THE ORDER OF INVESTIGATION.

Stated in greater detail, the principal allegations of the complaint are that the rates and fares of all of the respondents are unjust and unreasonable; that the ocean carriers or certain of them are parties to an unlawful agreement or understanding among themselves and with connecting rail and steamship lines in Alaska to limit competition by so arranging their schedules and routes and the ownership or control of docks and wharves as to give each line a practical monopoly of the traffic between specified ports or sections of Alaska; that the ocean carriers unlawfully discriminate by applying much lower rates on the traffic of cannery and mining companies than on that of other shippers; and that the Copper River & Northwestern Railway and the American-Yukon Navigation Company and the lines with which they connect unlawfully discriminate by paying rebates or by practicing other devices which enable certain large shippers to obtain transportation for lower rates than are paid by the general public. Our order of investigation, broadly speaking, embraces the foregoing allegations and also includes an inquiry into respondents' wharfage rates, regulations, and practices and into the ownership by respondent railroads or their interest in mines or in minerals which they transport. These several matters will be considered in the order stated.

ARE RESPONDENTS' RATES UNREASONABLE?

The attack is upon respondents' rate schedules as a whole. The record, however, deals principally (1) with traffic originating at

points in the United States moving by rail to Seattle and thence by steamers to ports in southeastern and southwestern Alaska; (2) with traffic originating at Seattle or beyond, destined to points on the Copper River & Northwestern Railway via Cordova, or to points on the Yukon and tributary rivers via Skagway; and (3) with copper ore shipped from mines served by the Copper River & Northwestern Railway to smelters at Tacoma, Wash.

Examples of the rates applying on each of these three classes of traffic will serve to illustrate the general level of the rates attacked. The proportional rates, stated in dollars and cents per weight ton of 2,000 pounds or per measurement ton of 40 cubic feet, ship's option, on a few of the principal moving commodities from Seattle to representative ports in Alaska in effect September 1, 1916, and comparisons with certain other rates referred to in the record and briefs, are shown in the following table:

Comparisons of proportional rates from Seattle, Wash., to Alaska ports with steamship rates between other points.

From—	To—	Miles.	Beer.	Canned goods.	Dry goods.	Feed.	Flour.	Dried fruit.	Hay, double compressed.	Lumber.[1]	Mining machinery.	Nails.	Grain.	Coal oil.	Potatoes.	Sugar.
Seattle, Wash.	Ketchikan, Alaska[2]	662	$6.50	$6.50	$6.50	$6.50	$6.50	$6.50	$9.50	$7.50	$6.50	$6.50	$6.50	$6.50	$6.50	$6.50
Do.	Juneau, Alaska[3]	899	7.50	7.50	7.50	7.50	7.50	7.50	10.50	8.00	7.50	7.50	7.50	7.50	7.50	7.50
Do.	Skagway, Alaska[3]	1,000	8.50	8.50	8.50	8.50	8.50	8.50	11.50	8.50	8.50	8.50	8.50	8.50	8.50	8.50
Do.	Cordova, Alaska[3]	1,608	14.00	11.00	14.00	11.00	11.00	11.00	15.00	12.00	11.00	11.00	11.00	12.00	12.00	11.00
Do.	Nome, Alaska[4]	2,309	18.50	18.50	18.50	20.00	18.50	18.50	23.00	22.50	18.00	18.50	20.00	18.50	18.50	18.50
Boston, Mass.	Jacksonville, Fla.	1,009	4.40	4.60	14.40	[5] 1.80	[5] 4.40	10.20	....	[5] 4.40	....	4.40	[5] 1.80	12.20	[5] 3.30	12.20
Philadelphia, Pa.	do.	859	4.40	4.60	13.40	[5] 1.70	[5] 2.00	9.40	....	[5] 4.00	....	4.00	[5] 1.70	9.40	[5] 4.00	11.40
Do.	Savannah, Ga.	670	4.40	4.60	11.40	[5] 1.60	[5] 2.00	7.40	....	[5] 3.80	....	3.80	[5] 1.80	5.00	[5] 3.20	9.40
New York, N. Y.	Charleston, S. C.	627	5.00	4.60	11.40	[5] 1.80	[5] 3.00	7.40	....	[5] 3.80	....	3.80	1.80	7.40	[5] 3.20	9.40
San Francisco, Cal.	San Jose, Guatemala	1,820	12.00	12.00	12.00	....	12.00	8.00	....	17.00	....	12.00	12.00	9.00	12.00	9.00

[1] Rates per 1,000 feet board measure.

measurement and apply on small lots. Rates on larger shipments are somewhat less.
Carload rates are generally $3 per ton less.

Respondents state that their proportional rates are the same as the local port to port rates and that in recent years the latter have not differed materially from the proportional rates contemporaneously in effect. While it appears from these and other comparisons of record that respondents' proportional rates usually exceed the steamship rates for similar distances between ports of the United States, shippers who testified did not seriously contend that they are unreasonable. Some complaint was made of the practice of assessing charges on a measurement basis, which, especially in the case of light and bulky articles, produces higher charges than would accrue on the basis of weight. That practice, however, can not be condemned upon the meager evidence afforded by this record which shows that the same method of publishing and applying rates is generally followed by all other steamship companies.

Examples of the through rates per weight ton from Seattle to points on the Copper River & Northwestern Railway via Cordova and to interior points via Skagway in effect September 1, 1916, are given in the following table:

From Seattle, Wash.	To Chitina, Alaska (1,734 miles).[1]		To McCarthy, Alaska (1,794 miles).[1]		To Kennecott, Alaska (1,798 miles).[1]		To Tanana, Alaska.[2]		To Fairbanks, Alaska (2,670 miles).[2]	
	C. L.	L. C. L.	C. L.	L. C. L.	C. L.	L. C. L.	C. L.	L. C. L.	C. L.	L. C. L.
Blacksmith coal	$15.70	....	$30.60	....	$21.00	....	....	$64.50	....	$66.50
Potatoes	45.60	$54.00	57.20	$67.40	60.20	$70.80	$70.00	80.25	$72.00	82.25
Canned meats, fruits, milk, and vegetables	40.60	45.00	50.60	55.80	53.20	58.60	62.00	66.00	64.00	68.00
Flour	39.60	45.00	49.60	55.80	52.20	58.60	62.00	65.00	64.00	67.00
Feed	25.00	36.00	36.90	48.00	37.85	49.60	62.00	66.00	64.00	68.00
Nails	38.00	45.00	38.00	55.80	38.00	58.60	61.00	66.00	63.00	68.00
Shovels, picks	40.60	45.60	50.60	55.80	53.20	58.60	62.00	68.00	64.00	70.00
Smoked meats	45.60	53.00	57.20	66.40	60.20	69.80	72.00	84.00	74.00	86.00
Sugar	39.60	45.00	49.60	55.80	52.20	58.60	62.00	65.50	64.00	67.50

[1] The carload rates on feed to these points are joint through rates; others are the sums of the locals to and from Cordova.
[2] Joint through rates.

Through rates on most commodities between Seattle and points on the Copper River & Northwestern Railway are made by combining the local or proportional rates to and from Cordova. Joint class and commodity rates apply between Seattle and interior points via Skagway, which in most instances are somewhat less than the aggregates of the intermediate rates. The greater part of the traffic to Yukon River points east of Tanana and Fairbanks moves by way of Skagway. That for points west moves principally over the all-water route through St. Michael. It is said that the rates to Tanana and Fairbanks are substantially the same via either route. To points west of Tanana and Fairbanks the all-water rates via St. Michael are lower than the joint rail-and-water rates via Skagway.

It is shown in complainants' brief that the rates on numerous commodities from Seattle to Fairbanks, 2,670 miles, are from two to four times higher than the rates on the same commodities from Boston, Mass., to Prince Rupert, British Columbia, 3,478 miles; that the rates from Cordova to McCarthy, 191 miles, are usually higher than those from Chicago, Ill., to Seattle, 2,276 miles; and that in many instances they are higher than the rates from Chicago to Cordova, 3,877 miles.

The proportional rates of the ocean carriers and also the joint rail-and-water rates via Skagway shown in the preceding tables are substantially higher in most instances than the rates effective earlier in the season. The increase in the proportional rates averaged about $1 per ton and that in the joint rates ranged from $5 to $14 per ton. In justification of the increased rates the steamship companies show that the additional revenue which they yield is not sufficient to offset the increased cost of transportation resulting from recent legislation affecting the manning of their vessels and from the increased cost of labor, material, and supplies. Concerning the increases in the joint rates via Skagway the rail lines explain that in the early season of navigation nearly all traffic moves on class rates. For about two months in midsummer lower commodity rates are made effective and then as the close of navigation approaches the class-rate basis is restored. The object of this practice, which has been followed for several years, is to induce a heavy movement of traffic during the time when the transportation service can be performed under most favorable conditions and at a minimum cost. Complainants allege that since 1913 rates to Fairbanks and other interior points have been largely increased. In that year the American-Yukon Navigation Company began operating its vessels between Dawson and St. Michael in competition with those of the Northern Navigation Company. A rate war followed and during that season rates were much lower than before or since. In the spring of 1914 the American-Yukon Navigation Company acquired the fleet and other transportation property of its competitor, and since then rates have been maintained on substantially the present basis. As illustrated in the following table, however, the present rates are much lower than those in effect prior to 1913:

Statement illustrating changes in rates from Seattle to Fairbanks since 1906, stated in dollars per net weight ton.

	1906		1910		1912		1914		1916[1]		1916[2]	
	C. L.	L. C. L.	C. L.	L. C. L.	C. L.	L. C. L.	C. L.	L. C. L.	C. L.	L. C. L.	C. L.	L. C. L.
Class A	$96	$105	$93	$103	$93.00	$102.75	$59.00	$64.00	$50.00	$64	$64	$70
Class B	115	130	113	128	112.50	128.00	66.00	78.75	68.00	79	74	86
Class C	135	155	133	143	133.75	143.25	83.00	92.75	83.00	93	91	101
Hay, double compressed	90	......	88	......	90.00	....	50.00	....	50.00	....	64	......
Oats and feed	85	......	83	......	85.00	....	50.00	....	50.00	....	64	......
Blacksmith coal	80	......	78	......	78.00	....	50.00	....	50.00	....	64	......
Flour	85	......	83	......	83.00	....	52.50	....	52.50	....	64	......
Sugar	85	......	83	......	83.00	....	52.50	....	52.50	....	64	......
Canned milk and cream	85	......	83	......	83.00	....	52.50	....	52.50	....	64	......
Coal oil	90	......	88	......	89.50	....	58.00	....	58.00	....	68	......
Beer	105	......	103	......	108.50	....	66.00	....	55.00	....	74	......

[1] Midseason rates effective prior to August 19.
[2] Rates effective after August 19.

From another exhibit filed by respondents it appears that complainant Samson Hardware Company shipped during the years 1914–15, 229,553 pounds of freight via St. Michael and 529,167 pounds via Skagway, upon which the charges aggregated $23,361.50. Had the same shipments moved under the rates effective during 1912 the charges would have been $12,138.26 greater. Excepting the joint rates on copper ore from points on the Copper River & Northwestern Railway to Seattle and Tacoma, it is not alleged and no substantial effort was made to prove that the rates on particular commodities are unreasonable *per se* or in relation to the rates on other commodities between the same or similarly situated points. Many expense bills were filed showing the rates paid on particular shipments but standing alone these are without probative force.

The joint rates on copper ore and concentrates in sacks, stated in dollars and cents per ton of 2,000 pounds, minimum weight 40,000 pounds, from mines on the Copper River & Northwestern Railway to Seattle and Tacoma applying in connection with the Alaska Steamship Company are as follows:

Carload rates on copper ore and concentrates, in sacks, from stations on the C. R. & N. W. Ry. to Seattle and Tacoma.

Actual value per ton not to exceed	$25.00	$40.00	$50.00	$65.00	$80.00	$100.00	$125.00	$150.00	$175.00	$200.00	$300.00	$400.00	$500.00
Rate per ton	9.00	9.50	10.00	11.00	12.00	13.00	15.00	17.00	20.00	23.50	26.10	30.40	32.70

These are blanket rates, which apply from stations Chitina to Kennecott, inclusive. Rates on bulk ore and concentrates, minimum weight 40,000 pounds, are $1 per ton higher than the rates applicable to shipments in sacks. Practically all shipments are sacked and

move from Kennecott, except an occasional shipment from McCarthy. The Alaska Steamship Company receives a flat division of $3 per ton regardless of the value of the ore. Complainants argue that the remainder of the rate which yields from 3.07 cents to 14.97 cents per ton-mile for the rail haul of 195 miles is grossly excessive in comparison with rates on like traffic for similar distances between points in the United States. The rate of $13 per ton on copper ore and concentrates valued at $100 per ton yields a revenue per ton-mile of 5.1 cents for the rail portion of the haul. This division of the joint rate is contrasted with the following rates on copper ore:

	Distance.	Rate per ton, 2,000 pounds.	Earnings per ton-mile.
	Miles.		*Mills.*
Anaconda, Mont., to St. Paul, Minn.	1,155	$6.00	5.19
Wallace, Idaho, to Pittsburgh, Pa.	2,261	15.20	6.72
Wallace, Idaho, to New York, N. Y.	2,705	16.00	5.91
Sand Point, Idaho, to East Helena, Mont.	311	3.25	10.45

As we have frequently stated, however, such comparisons without evidence of the circumstances and conditions surrounding the traffic are not controlling. Moreover, the total rate which the shipper must pay determines the cost of transportation and the divisions of a joint rate are not, generally speaking, a sound test of the reasonableness of the through rate itself. *Bulte Milling Co.* v. *C. & A. R. R. Co.*, 15 I. C. C., 351. For the distance of approximately 1,800 miles from Kennecott to Tacoma, the rate of $13 per ton yields 7.2 mills per ton-mile, but the greater part of the haul is by water. Complainants also compare the rail division of the joint rates with rates ranging from $1.10 to $2.50 per ton on low-grade copper ore from White Horse to Skagway, a distance of about 110 miles. Respondents testified, however, that the latter rates are unusually low and that they were established for the purpose of developing mines producing nothing but low-grade ore which could not be marketed under higher rates.

Complainants contend that the fixing of rates according to the value of the ore as determined by the smelter returns operates in some way to the disadvantage of independent ore shippers or those who desire to develop copper mines. As a general rule rates of all lines on copper ore are graduated according to value. It is not shown that respondents' rates are improperly adjusted with reference to ores of different values or that they are not applied in a uniform and nondiscriminatory way. No one interested in the shipping of copper ore or the development of copper mines has objected to the rates attacked, and there is nothing of record to support complainant's contention that the publication of graduated rates is unreasonable or discriminatory.

The first-class one-way fares from Seattle, Cordova, and Skagway to representative points in Alaska, effective in 1916, were as follows:

From—	Miles.	Fare.	Per passenger-mile.
Seattle to—			*Cents.*
Ketchikan	661	$24.00	3.6
Juneau	899	28.00	3.1
Skagway	1,000	33.00	3.3
Cordova	1,603	47.50	2.9
Nome	2,300	76.00	3.3
Skagway to—			
Fairbanks	1,670	100.00	6.0
Tanana		85.00	
Ruby		89.00	
Cordova to—			
Miles Glacier	48	5.95	11.9
Chitina	131	15.60	11.9
Kennecott	196	23.40	12.4

But little testimony was offered with respect to passenger fares. Exhibits filed by respondents indicate that the proportional fares of the ocean carriers yield about the same earnings per passenger-mile as those of steamship companies operating along the coasts of the United States and on the great lakes.

Respondents admit that the general level of their rates is higher than that prevailing in the United States, but contend that the disparity is fully justified by the adverse conditions surrounding transportation along the Alaska coast and within Alaska, some of which have been briefly noted. The traffic of the ocean carriers is essentially a one-way seasonal traffic in which full cargoes are the exception rather than the rule. It is estimated that the yearly traffic amounts to less than 50 per cent of the carrying capacity of the steamers engaged in the Alaska trade. Delays attributable to difficulties of navigation largely increase the cost of transportation, as the expense of operating a steamer amounts to several hundred dollars per day. All labor costs are high, the wages of crews, for example, being about 13 per cent higher than are paid by steamship companies operating along the Atlantic coast. Insurance rates range from 10 to 16 per cent of the value of the vessels and are three or four times higher than are paid by steamers operating on the California route or along the Atlantic coast. That these high insurance rates materially affect the cost of transportation is indicated by the statement that during the season of 1915–16 the Pacific Coast Steamship Company paid for marine insurance an amount equivalent to approximately 10 per cent of its gross steamer revenues, constituting an average charge of over 70 cents on each ton of freight handled by that carrier.

The respondent railroads emphasize the great cost of constructing, maintaining, and operating their lines because of the climate and

topography of the regions which they traverse and of their remoteness from the source of supplies. Extreme cold, heavy snowfall, and high winds impede operation in winter and substantially increase the expense. Not infrequently their lines are blocked and roadways and bridges are destroyed or seriously damaged by earth, rock, or snow slides, by floods, and by the shifting channels of glacial streams. Except during the four months' season of river navigation they handle little traffic other than southbound shipments of copper ore. To move practically a whole year's traffic within this short period necessitates a considerable expenditure for equipment which remains idle the greater portion of the year. All construction material, fuel, and other supplies must be obtained from Seattle or other distant points, and having no rail connections to which they can look for assistance in emergencies they must not only be fully equipped with locomotives and cars, but must also keep on hand large quantities of material and supplies and maintain shops fitted for all repair work that may be required. The wages of employees are about 100 per cent higher than the average wage for similar employment in the United States. All but a small portion of their traffic consists of copper ore and supplies for those engaged in or dependent upon mining. Because of the diminishing importance and the introduction of improved methods of placer gold mining on the Yukon and tributary streams the population of the interior and the traffic also have gradually decreased. The population of Dawson and vicinity, formerly about 35,000, is now less than 3,500. That of Skagway and many other once populous settlements has similarly decreased, so that the rail-and-water lines of the White Pass & Yukon Route and the American-Yukon Navigation Company, about 4,000 miles in length, now serve not more than 18,000 white inhabitants.

Respondents contend that these conditions, the uncertain future of the mining industry, and their failure in the past to realize a proper return upon their investment amply demonstrate that the present rates are not excessive and that they can not justly be reduced.

As stated complainants attack defendants' rate schedules as a whole. In *Frye & Bruhn* v. *No. Pac. Ry. Co.*, 13 I. C. C., 501, we said:

> There is a wide difference in the character of testimony required to test the reasonableness of an entire schedule of rates covering the whole traffic of a particular carrier and that required to test the reasonableness of a rate on a particular commodity between two definite points. Whether an attack upon an entire schedule of rates is well founded or not is to be determined largely by ascertaining whether the gross amount of traffic carried on those rates affords the carrier, above its operating expenses and taxes, a reasonable return upon the fair value of its property.

All of the respondents except the Canadian Pacific Railway Company's steamship lines and the Grand Trunk Pacific Steamship Company, Limited, have furnished information as to amount of their property investment, the character and volume of their traffic, their operating revenues, expenses and income, the physical and climatic conditions affecting maintenance and operating costs, and other pertinent facts. From the statistical data supplemented in some instances by information taken from the annual reports of these carriers to the Commission the following tables have been compiled. The table below deals with the ocean carriers operating between Puget Sound and Alaska:

Property investment, revenues, expenses, etc., of ocean carriers respondent herein.

	Property investment.	Value of fleets.	Capitalization.	Year.	Operating revenues.	Operating expenses.	Net operating revenues.	Interest.	Taxes.	Net operating income.	Volume of traffic (tons).
Alaska Steamship Co.	$4,072,070	$2,975,301	$3,000,000	1911	$1,811,977	$1,648,779	$163,198		$10,347	$152,851	
				1912	1,911,757	1,741,193	170,564		14,385	156,178	
				1913	1,820,904	1,742,872	78,031		7,943	70,088	
				1914	2,091,140	1,874,413	216,726		8,385	208,341	297,475
				1915	2,398,887	2,028,219	370,668		40,090	330,577	331,045
Total					10,034,665	9,035,476	999,187		81,150	918,035	
Pacific Coast Steamship Co.	807,620	641,818	1,500,000	1911	907,304	857,084	50,219		269	49,950	119,610
				1912	922,696	845,963	76,732		302	76,429	126,192
				1913	884,947	866,678	18,269		729	17,540	130,866
				1914	702,455	723,030	[1] 20,575		660	[1] 21,235	92,866
				1915	783,629	746,252	37,377		478	36,899	109,771
Total					4,201,031	4,039,007	162,022		2,438	159,583	579,305
Pacific-Alaska Navigation Co.	1,216,906	1,512,745	2,241,700	1914	517,656	449,208	68,452	$18,887	601	7,438	33,206
				1915	664,274	507,177	157,096	35,816	550	87,362	53,703
				1916	1,043,522	702,785	340,737	48,904	1,368	229,017	61,619
Total					2,225,452	1,659,165	566,285	103,607	2,519	323,817	148,528
Humboldt Steamship Co.	115,791	115,791	67,500	1911	157,884					23,746	17,785
				1912	122,083					[1] 14,705	17,579
				1913	130,000					[1] 25,645	14,269
				1914	106,145					[1] 19,014	13,608
				1915	139,599					16,385	19,739
Total					655,713	674,946			3,125	[1] 19,233	82,975
Border Line Transportation Co.	283,618	182,821	196,200	1915	288,670	256,559	32,111	7,229	1,657	23,223	69,536
				1916	352,071	348,164	3,906	4,098	1,333	[1] 1,574	68,704
Total					640,741	604,723	36,017	11,327	2,990	21,649	138,240

[1] Deficit.

The property investment is that shown in the annual reports of these carriers for the year ended December 31, 1915. The value of the fleets is the book value of the vessels engaged in the Alaska trade during the year 1916 and does not include investments in wharves or other facilities and equipment. Witnesses for respondents testified that because of the great demand for vessels resulting from the European war the present value of their fleets is at least 50 per cent greater than the book valuation. The capitalization shown is the total amount of bonds and capital stock outstanding on December 31, 1915. The revenues and expenses stated in the table are those derived from and chargeable to the Alaska service. Revenues and expenses which could not be directly assigned were distributed between the Alaska and other operations in proportion to the gross revenues. Respondents contend that these figures amply prove that the operation of vessels in the Alaska service does not yield excessive profits. The Alaska Steamship Company shows that during the entire period of its operation prior to December 31, 1915, it has paid dividends aggregating $1,120,000 and accumulated a surplus of $658,893, an equivalent of about 7.4 per cent per annum upon its property investment.

The combined fleets of the Pacific Coast Steamship Company and the Pacific-Alaska Navigation Company, now owned and operated by the Pacific Steamship Company, have earned a much lower return.

The following copy of an exhibit filed by the Copper River & Northwestern Railway shows similar information covering the period during which that line has been in operation:

Copper River & Northwestern Railway.

[Figures in *italics* indicate a deficit.]

EARNINGS, OPERATING EXPENSES, NET REVENUE, BOND INTEREST, AND FINAL OUTCOME, IN DOLLARS AND CENTS.

	Gross revenue.	Operating expenses.	Net revenue.	License tax.	Wharf tax.	Operating profit or loss.	Bond interest.	Outcome.
Nov. 1, 1911, to June 30, 1912	466,271.38	301,383.43	164,887.95	13,016.64	2,309.80	149,561.51	472,200.00	*322,638.49*
July 1, 1912, to June 30, 1913	433,560.41	575,059.85	*141,499.44*	19,525.00	2,741.40	*163,765.84*	1,141,045.65	*1,304,811.49*
July 1, 1913, to June 30, 1914	685,452.30	586,078.46	99,373.84	19,525.00	3,100.55	76,748.29	1,147,229.16	*1,070,480.87*
July 1, 1914, to June 30, 1915	917,760.71	481,281.31	436,479.40	12,246.11	4,301.95	419,931.84	1,151,000.00	*731,068.16*
July 1, 1915, to May 31, 1916	2,404,734.20	828,261.70	1,576,472.50	24,094.84	10,266.45	1,542,111.21	1,055,083.30	487,027.91
Total	4,907,779.00	2,772,064.75	2,135,714.25	88,407.59	22,720.15	2,024,586.51	4,966,558.11	*2,941,971.60*

EARNINGS.

	Freight revenue.	Passenger revenue.	Mail revenue.	Wharf revenue.	Express revenue.	Telegraph revenue.	Excess baggage revenue.	Switching revenue.	Miscellaneous revenue.	Construction freight.	Total.
Nov. 1, 1911, to June 30, 1912	396,577.03	33,247.40	13,063.56	15,726.37	733.18	1,590.70	169.15	505.81	1,233.05	3,425.13	466,271.38
July 1, 1912, to June 30, 1913	369,384.96	36,806.43	2,295.02	16,363.93	1,388.91	2,875.33	110.65	550.51	2,952.55	832.12	433,560.41
July 1, 1913, to June 30, 1914	528,893.85	89,080.50	28,646.81	26,461.22	1,650.50	4,903.08	724.45	558.63	4,043.45	489.81	685,452.30
July 1, 1914, to June 30, 1915	769,822.64	53,539.85	26,657.58	58,362.15	1,667.80	2,547.70	602.60	848.40	3,711.99	....	917,760.71
July 1, 1915, to May 31, 1916	2,146,803.25	55,559.05	26,282.46	156,739.66	1,315.21	2,867.01	460.24	623.07	14,084.25	....	2,404,734.20
Total	4,211,481.73	268,233.23	96,945.43	273,633.33	6,755.60	14,783.82	2,067.09	3,086.42	26,025.29	4,747.06	4,907,779.00

Copper River & Northwestern Railway—Continued.

OPERATING EXPENSES.

	Maintenance of way and structures.	Maintenance of equipment.	Traffic expense.	Conducting transportation.	General expense.	Total.
Nov. 1, 1911, to June 30, 1912	156,533.41	42,408.66	5,454.70	65,383.71	31,602.95	301,383.43
July 1, 1912, to June 30, 1913	354,155.44	110,184.01	4,329.38	59,906.18	46,484.84	575,059.85
July 1, 1913, to June 30, 1914	353,633.69	95,191.53	3,330.78	91,776.79	42,145.67	586,078.46
July 1, 1914, to June 30, 1915	270,665.96	87,562.01	3,011.22	81,676.21	38,365.91	481,281.31
July 1, 1915, to May 31, 1916	523,786.23	107,662.59	2,444.74	153,169.75	41,198.39	828,261.70
Total	1,658,774.73	443,008.80	18,570.82	451,912.64	199,797.76	2,772,064.75
Per cent of operating expenses	59.84	15.98	.67	16.30	7.31	100.00

CONTRIBUTORS TO FREIGHT REVENUE.

	Kennecott ore.		Kennecott freight.		Other freight.		Construction freight.		Total.		Kennecott.	
	Tons.	Revenue.	Tons.	Revenue.	Tons.	Revenue.	Tons.	Revenue.	Tons.	Revenue.	Per cent of tonnage.	Per cent of revenue.
Nov. 1, 1911, to June 30, 1912	14,946	284,239.26	2,146	35,279.78	4,363	77,057.99	1,301	3,425.13	22,756	400,002.16	75.11	79.88
July 1, 1912, to June 30, 1913	11,432	216,397.48	4,622	67,235.39	4,256	85,752.09	617	832.12	20,927	370,217.08	76.71	76.60
July 1, 1913, to June 30, 1914	13,160	256,546.34	6,060	88,267.51	6,270	184,080.25	496	489.56	25,986	529,383.66	73.96	65.14
July 1, 1914, to June 30, 1915	27,786	543,747.64	5,067	84,838.56	7,807	132,236.44			40,660	760,822.64	80.80	82.82
July 1, 1915, to May 31, 1916	81,629	1,845,676.97	8,336	148,328.33	7,655	152,797.95			97,620	2,146,808.25	92.16	92.88
Total	148,953	3,151,607.69	26,231	427,949.57	30,351	631,924.72	2,414	4,746.81	207,940	4,216,228.79	84.24	84.88

From this statement it appears that the revenues of the Copper River & Northwestern Railway have been insufficient to pay the operating expenses and fixed charges, the net result being a deficit, for the period November 1, 1911, to May 31, 1916, of $2,941,971.60. During the period July 1, 1915, to May 31, 1916, the road was operated at a profit due to the high price and the increased production of copper ore which constitutes by far the greater portion of its traffic. If copper had been worth its normal price the operation of the line during this period would have resulted in a deficit of approximately $310,000. The annual report of the Copper River & Northwestern Railway for the year ended June 30, 1915, shows that it earned a net operating revenue of $2,238.59 per mile; and that its freight and passenger revenues averaged about 10.9 cents per ton-mile and 11.5 cents per passenger-mile, respectively. This road has a bonded indebtedness of $23,020,000, and outstanding capital stock of the par value of $4,817,400, a total capitalization of $27,837,400. The book value of its property investment, $27,847,049, includes the sums expended for construction work on the abandoned Valdez and Katalla lines, interest on bonds charged against construction, and contractors' profits. Eliminating these items, it appears that the actual amount invested in the present line from Cordova to Kennecott is approximately $16,425,000. Taking this, for the purposes of this case, as the reasonable value of the property devoted to the public use upon which, under the doctrine announced in *Smyth* v. *Ames*, 169 U. S., 466–546, the carrier is entitled to a fair return, it appears that the net operating revenues would have yielded about 2.7 per cent per annum upon the property investment.

The following statement covers the lines comprising the White Pass & Yukon Route and the American-Yukon Navigation Company:

Property investment, revenues, expenses, etc., of White Pass & Yukon Route and American-Yukon Navigation Co.

	Property investment.	Capitalization.	Year.	Gross revenues.	Operating expenses.	Net operating revenues.	Interest.	Taxes.	Miscellaneous general expenses.	Net income.
Pacific & Arctic Railway & Navigation Co.	$2,273,263	$2,586,004	1911	$258,949	$168,110	$90,839	$41,000	$3,339	$16,830	$29,679
			1912	287,847	148.460	139,387	41,000	3,372	22,740	72,275
			1913	236,784	159,739	77,044	41,000	3,468	32,597	[1] 20
			1914	249,934	163,934	86,000	41,000	3,693	41,761	13
			1915	215,523	163,060	52,463	41,000	2,275	5,684	3,621
Total				1,249,037	803,303	445,733	205,000	16,147	119,602	105,568
British Columbia Yukon Ry. Co.	2,088,656	2,002,467	1911	120,375	45,678	74,697	55,423	2,959	6,442	9,872
			1912	133,709	38,489	95,219	55,423	2,959	9,020	27,816
			1913	97,075	34,214	62,861	55,423	2,960	4,483	[1] 5
			1914	84,004	44,504	39,499	55,423	2,961	6,523	[1] 25,408
			1915	116,983	42,274	74,709	55,423	2,965	5,392	10,927
Total				552,146	205,159	346,985	277,115	14,804	31,860	23,202
British Yukon Ry. Co.	4,723,689	4,978,879	1911	297,375	103,456	193,918	102,238	5,815	10,791	75,078
			1912	290.131	87.976	202,155	102,238	6,814	10,959	82,144
			1913	252,084	131,833	120,250	102,238	6,816	27,328	[1] 16,131
			1914	306,002	101,774	204,227	102,238	6,817	265,703	[1] 170,530
			1915	255,369	96,628	158,740	102,238	6,829	2,830	46,842
Total				1,400,961	521,667	879,290	511,190	33,091	317,611	17,398
British Yukon Navigation Co.	1,194,587	1,339,441	1911	440,755	290,866	149,889	74,366	2,206	45,881	[2] 50,972
			1912	449,120	296,798	152,322	74,366	2,206	51,182	[2] 49,459
			1913	430,866	325,271	105,595	74,366	2,347	34,064	[2] 15,972
			1914	367,549	415,629	[1] 48,079	74,366	2,387	143,268	[1][2] 253,844
			1915	319,820	345,549	[1] 25,729	74,366	3,253	77,296	[1][2] 180,382
Total				2,008,110	1,674,113	333,998	371,830	12,399	351,691	[1] 317,828
American-Yukon Navigation Co.	1,794,768	1,585,097	1913	161,034	144,731	16,303	....	28	16,229	45
			1914	829,586	638,987	190,598	71,459	9,594	109,503	40
			1915	835,597	569,750	265,846	78,598	9,885	177,201	161
Total				1,826,217	1,353,468	472,747	150,057	19,507	302,933	246

[1] Deficit.

[2] Includes mail service earnings.

During the five years prior to 1916 the net income of the Pacific & Arctic Railway & Navigation Company, after payment of operating expenses and fixed charges, was $105,569.50, and of this amount all but about $3,600 was earned during the years 1911 and 1912. The average annual net income, $21,113.90, is somewhat less than 1.2 per cent of the par value of the outstanding capital stock. The average annual income, without deduction for bond interest, $62,114.10, is equal to a return of approximately 2.7 per cent upon the property investment. The annual report of the Pacific & Arctic Railway & Navigation Company for the year ended June 30, 1915, shows a net operating revenue of $2,122.05 per mile and average earnings of about 25.2 cents and 13.4 cents per ton-mile and per passenger-mile, respectively. The tonnage handled by this carrier amounts to about 30,000 tons annually and that of the American-Yukon Navigation Company to about 15,000 tons annually. The showing made in the exhibits filed by the Canadian members of the route is even more unfavorable, for it appears that, taking the five-year period as a whole, they were operated at a heavy loss. Those filed by the American-Yukon Navigation Company indicate that its revenues have merely sufficed to pay operating expenses and fixed charges.

Complainants contend that the financial statements of these respondents are inaccurate and that, as a matter of fact, they have earned in the past and probably now earn a large net income from the operation of their lines. Statements published in Poor's Manual, respecting their financial status and earnings, are cited and it is urged that the annual reports of the White Pass & Yukon Railway, Limited, the English holding company, to its stockholders would disclose a very different state of affairs from that indicated by respondents' exhibits. A witness in complainants' behalf testified that he had examined the original minutes of the meetings of the board of directors of the Pacific & Arctic Railway & Navigation Company for the years 1900 to 1908, inclusive, and that such records show the declaration of dividends ranging from 5.64 per cent to 54.38 per cent and aggregating 184.47 per cent for the nine-year period. But the president of these lines, who has been connected with them from the beginning, testified that at no time had a cash dividend been paid exceeding 5 per cent; that at one time a stock dividend of 25 per cent was declared; and that in the early years when the lines were fairly prosperous the surplus earnings were expended for betterments.

Complainants further assert that these lines are largely overcapitalized and that the property investment claimed is grossly excessive. The book value of the rail lines, less depreciation, is $9,329,790, equivalent to about $77,100 per mile of line. Their bonded indebted-

ness, $3,973,231, and the par value of the capital stock outstanding, $5,684,119, a total capitalization of $9,657,350, is equivalent to about $79,800 per mile of line. A copy of the report of the Board of Railway Commissioners of Canada in *Dawson Board of Trade* v. *White Pass & Yukon Ry. Co.*, decided March 2, 1912, *13 Can. Ry. Cases*, 527, filed as an exhibit, indicates that some time previously the board's chief engineer made a physical valuation of the rail lines and estimated their cost as $5,932,474, or $48,738 per mile. In commenting upon this report the board stated:

These show a cost of $48,738 per mile. The statement furnished by the companies puts the original cost at $62,000 per mile. This included a profit of 15 per cent to the construction company, $90,000 for the Dyea trail, $85,000 for the White Horse Tramway Co., and some other small items which Mr. Mountain does not think should form part of the capital account. Another item that went to swell the cost of construction was the expense and loss by reason of the continual disorganization of the construction gangs by their stampeding to placer mines that were being discovered. Mr. Mountain thinks the road should be duplicated for $50,000 per mile, but does not desire to go on record as saying that the original construction did not cost $62,000 per mile. It does not, however, become necessary to decide which should be the proper sum, in view of the lean earnings. It is altogether likely that the stockholders would, in the meantime, be glad to obtain an earning of, say, 4 per cent upon Mr. Mountain's valuation, were that possible. Taking the average dividends paid from the beginning of operation, the shareholders have not realized more than about 6 per cent upon their investments; from now on, unless the traffic increases greatly, even at present rates, the earnings must be of a nominal character only.

Respondents' evidence as to the property investment and earnings of the American-Yukon Navigation Company is challenged on the grounds that its fleets and other transportation properties are much overvalued, a contention which will be discussed hereinafter, and that certain payments for these properties should be considered as net operating income. While the record is not entirely clear upon the subject, it appears that between April, 1914, and December 31, 1915, the American-Yukon Navigation Company appropriated approximately $364,000 from its earnings to the reduction of its funded debt. This sum, which properly should be considered as net operating income, is equivalent to a return of about 11 per cent per annum upon the property investment.

ALLEGED UNLAWFUL DISCRIMINATIONS AND AGREEMENTS.

The allegation that respondents have restricted competition by agreements for a territorial division of routes and traffic is directed more particularly against the Alaska Steamship Company and the Pacific Coast Steamship Company. The acts alleged would constitute violations of laws prohibiting combinations and conspiracies in restraint of trade which are not within the province of this Com-

mission to administer or enforce. The record, however, is barren of facts tending to sustain the allegation. On the contrary, it affirmatively shows that they were engaged in transportation to all portions of Alaska over much the same routes and actively competed with each other and with other water carriers serving Alaska.

The principal complaint against the ocean carriers is in relation to the discriminations resulting from the practice of according lower rates to cannery and mining companies than to the general public. Most of the canneries are situated at isolated points off the regular steamer routes, but some few of them are in or near towns, as at Ketchikan, Wrangel, and Cordova. Some of these canneries and also certain large mining companies located at or near Juneau operate mercantile establishments which actively compete with the local merchants.

For many years it has been the practice of the steamship companies to accord special rates to cannery and mining companies. Originally the canneries handled their own traffic with small steam or sailing vessels, barges, or tugs, and several of them still move their shipments in that way. The material and supplies used in their operation and their output, consisting principally of canned salmon, constitute about 50 per cent of the total steamship traffic. Respondents assert that in order to obtain this business it was necessary to make rates which approximated the cost to the canneries of furnishing their own transportation. They also justify the practice on the ground that as the traffic is usually handled in one voyage each way or in comparatively large shipments the cost of service is less.

The contracts with the cannery and mining companies specifically provided that the rates named therein would apply only on local port to port shipments, and respondents' witnesses testified that this provision was strictly observed. The record plainly shows, however, that much of the traffic originates at interior points and moves by rail to Seattle. On such traffic it is customary for the shippers or their agents to pay the rail charges, take actual or constructive possession, and deliver the property to the steamship companies with their own facilities as new shipments from Seattle. In some instances, however, shipments are transferred directly to the steamship docks by the rail carriers, and the shipping instructions show the details of the prior rail movement. Respondents argue that as the traffic does not move under through bills of lading and is all rebilled at Seattle, the transportation beyond the port is not a continuation of the original rail movement and hence is not subject to the act. In discussing a similar practice at Galveston, Tex., we said in *S. P. Co. Ownership of Atlantic Steamship Lines*, 43 I. C. C., 168, 181:

It appears to have been assumed by both carriers and shippers that the mere method of billing gives support to a fiction that the shipper intervenes at

Galveston and thus converts the through shipment which is subject to the act to regulate commerce into two independent shipments, neither of which is subject to this act. Of course, this assumption is unsound. It seems needless to refer to the numerous expressions in which the Supreme Court has stated that it is the essential character of the shipment and not the mere incidents of billing which determine whether or not the shipment is subject to the act.

Manifestly the application of special contract rates on through rail-and-water shipments for cannery and mining companies which are lower than the published rates constitutes an unlawful departure from the tariffs and an unjust and unlawful discrimination against other shippers. The record shows, however, that all contracts according special rates to cannery and mining companies were canceled effective November 1, 1916, following the passage of the Shipping Board act.

That the Copper River & Northwestern Railway and the Alaska Steamship Company prevent the development of independent copper mines by imposing extortionate rates on copper ore and by transporting shipments of the Kennecott Copper Corporation, which owns valuable copper mines at or near Kennecott, for less than the rates demanded from others on like shipments, is a contention strongly urged in complainants' brief. This contention appears to rest on the theory that as the Kennecott Copper Corporation owns all the bonds and stocks of the railway and a controlling interest in the steamship company, it secures transportation for practically the cost of service and therefore is not prejudiced by the maintenance of excessive rates. In other words, although it may pay the published tariff rates in the first instance, as respondents testified, the transaction is, in substance, a mere matter of bookkeeping between corporations owned and controlled by the same interests, which at most effects only a temporary formal transfer to the common carrier of the difference between the amount of its freight charges and the cost of transportation.

It does not necessarily follow that one who ships a particular commodity over the lines of a proprietary common carrier procures the transportation for the exact cost of service. Conceivably that result might be attained if all rates and divisions of rates on all commodities were accurately adjusted on a cost of service basis. But, accepting complainants' theory as substantially correct, and applying it to the present situation, would lead to a conclusion directly opposed to that for which they contend. From November, 1911, to May 31, 1916, the Kennecott Copper Corporation shipped from Kennecott 148,953 tons of copper ore, upon which the freight charges were $3,151,607.69, equivalent to an average rate of $21.15 per ton. During the same period the traffic of all other shippers, amounting to 30,351 tons, yielded $631,924.72, or an average rate of $20.82 per ton. The ship-

ments of the Kennecott Copper Corporation constituted 84.24 per cent of the railway's total tonnage and yielded 84.88 per cent of its total revenue. The operating expenses and fixed charges of the railway have largely exceeded its revenues, and therefore if the Kennecott Copper Corporation pays the cost of service, it pays higher rates on its shipments than are paid by other shippers from whom the published tariff rates are collected. We find nothing in this record to sustain complainants' contention that respondents discriminate in the matter of rates or otherwise in favor of the Kennecott Copper Corporation.

The contention is also made that the White Pass & Yukon Route and the American-Yukon Navigation Company have unlawfully acquired a monopoly of transportation on the Yukon and tributary rivers and that they pay to the Northern Commercial Company a rebate of at least $12 per ton on all freight transported by the American-Yukon Navigation Company.

Prior to 1901 the Alaska Commercial Company, the Alaska Exploration Company, the Seattle-Yukon Transportation Company, and the Empire Transportation Company were engaged in transportation on the Yukon River and its tributaries. The first-named three companies also operated mercantile establishments at various points. In that year the Northern Commercial Company and the Northern Navigation Company, owned by the same interests, were organized; the former to take over the mercantile establishments of the first-named four companies, and the latter their transportation properties. Before the Northern Navigation Company ceased to be an operating carrier, in the spring of 1914, it had acquired control of practically all transportation facilities in the territory which it served. It participated in joint rates and through routing arrangements with the rail-and-water lines of the White Pass & Yukon Route and with ocean steamers via St. Michael.

As stated, the American-Yukon Navigation Company began operating steamers between Dawson and St. Michael in the spring of 1913 in competition with the fleet of the Northern Navigation Company. The ensuing rate war was disastrous to both companies, and at the end of the season the Northern Commercial Company and the Northern Navigation Company offered to sell their entire properties to the American-Yukon Navigation Company. Later an agreement was reached to sell only their transportation properties, consisting of about 44 steamers, and numerous barges, wharves, warehouses, shipyards, ways, and other terminal facilities. It was agreed that the Northern Navigation Company should receive $1,500,000 and the Northern Commercial Company $315,000 for their respective interests in these properties.

The contention that the American-Yukon Navigation Company pays rebates to the Northern Commercial Company, thereby giving the latter a monopoly of the mercantile business along the Yukon and tributary rivers, rests upon the provisions of these purchase agreements. The agreement with the Northern Navigation Company provides for the payment of $200,000 cash upon the signing of the contract; the transfer to the Northern Commercial Company of merchandise, the value of which was then undetermined but which was estimated to be in the neighborhood of $145,000; the annual payment of an amount equivalent to $12 per ton on all commercial tonnage originating at or destined to points beyond the lines of the American-Yukon Navigation Company whether the property of the Northern Commercial Company or of others; and also the payment of the same amount per ton on shipments received from or consigned to the Northern Commercial Company at Dawson, whether or not the American-Yukon Navigation Company participated in the transportation. Interest at 6 per cent per annum was to accrue on the deferred payments. It was further stipulated that on traffic consigned to it the Northern Commercial Company might deduct $12 per ton and pay it direct to the Northern Navigation Company, and that in any event the purchase price should be paid in full by December 15, 1920.

In consideration of the purchase price of $315,000 to be paid in seven annual installments of $45,000 each, without interest, the Northern Commercial Company transferred its wharves, warehouses, and other transportation property to the American-Yukon Navigation Company and agreed to ship all of its freight over that line; that its seasonal shipments should not be less than 4,000 tons, and that it would remain in business for not less than seven years. Among the assets of the Northern Commercial Company transferred to the American-Yukon Navigation Company was a mail service contract with the United States government which yielded $41,000 annually and had four years to run.

Respondents vigorously oppose complainants' assertion that the property was overvalued, or that by any provision of the purchase agreement, or by any device or means whatsoever, the Northern Commercial Company has received transportation for less than the lawful tariff rates or has been given any undue preference or advantage over its competitors.

Copies of these purchase agreements were filed in the record. That between the American-Yukon Navigation Company and the Northern Navigation Company shows that 44 vessels and 57 barges, value not stated, were transferred and that the inventory value of the property, exclusive of vessels and barges, was $676,006.82. The book

value of the entire property was somewhat more than $1,900,000. This book value was based on the original cost less losses and depreciation. It is stated that the cost of repairs and betterments, amounting to about $75,000 per year, had been charged to operating expenses. Complainants contend that much of the floating and other equipment was old and practically worthless, evidenced in part by the fact that since the American-Yukon Navigation Company acquired possession it has operated only about 10 or 12 of the vessels each year. Respondents' witnesses testified, however, that with few exceptions the property was either in good condition or could have been put in repair at small expense; that most of the vessels not in use are kept in repair and held in shipyards or on ways for use in emergencies; and that more vessels are not operated because their use is not warranted by the volume of traffic offered.

It appears that in former years it was considered that the type of boat used on the Yukon River could not safely tow more than one or two barges. Experience has since demonstrated that by installing more powerful engines they can handle tows consisting of five to seven barges. This latter method of transportation is more economical than that formerly employed. Respondents' evidence further shows that the value of the barges alone approximated $800,000, and that nine boats selected at random by counsel for complainant were worth about $401,000. As the inventory value of the property, exclusive of floating equipment, was $676,006.82, there appears to be little room for the contention that the price paid was grossly excessive. The president of the Northern Navigation Company testified that the condition of the property was taken into consideration in fixing the selling price and that he regarded the latter as low, inasmuch as it was about $400,000 less than the depreciated book value. He also testified that for four or five years prior to 1913 the net operating income of the Northern Navigation Company averaged $169,000 per annum, which is equivalent to a return of more than 10 per cent upon the purchase price.

Pursuant to the terms of the purchase agreement, the deferred payments of $12 per ton were made in the following manner: On traffic consigned to the Northern Commercial Company expense bills based on the published tariff rates were presented to the local agent of the Northern Commercial Company for certification as to their correctness. They were then forwarded to the general office of the American-Yukon Navigation Company at Skagway, where a statement was made up showing the charges at the published tariff rate and a deduction from the aggregate charges of an amount equivalent to $12 per ton on the total weight. Upon submission of this statement and a bill for the balance due to the general office of the Northern Commer-

cial Company at San Francisco, the latter company issued its check in payment thereof and immediately paid the $12 per ton, deducted from the freight charges, to the Northern Navigation Company. Such payments were credited on the purchase price and ceased to draw interest. The payment of $12 per ton on shipments other than those of the Northern Commercial Company are made on December 15 of each year.

As has been stated, the Northern Navigation Company and the Northern Commercial Company are owned and controlled by the same interests. They have the same general officers and the same office force, and it appears that it has always been the practice for the Northern Commercial Company to act as the financial agent of the Northern Navigation Company. Respondents testified that no part of the $12 per ton paid over to the Northern Navigation Company by the commercial company was returned to the latter, directly or indirectly, except that in distributing the assets of the navigation company, which upon the sale of its transportation property ceased to be an operating concern, the commercial company as one of the stockholders received its proper proportion. The commercial company owns only 6.7 per cent of the stock of the navigation company. Respondents deny that the method of deferred payments is unlawful, or that it has operated in any way to the advantage of the commercial company. They urge that inasmuch as the American-Yukon Navigation Company was unable to pay wholly in cash or to bind itself to pay annually a fixed part of the deferred purchase price, it naturally followed that annual payments, conditioned upon the amount of traffic handled, was the only feasible method of payment. The deduction by the Northern Commercial Company of $12 per ton on traffic consigned to it is somewhat akin to a practice criticized in *Weleetka Light & Water Co.* v. *Ft. S. & W. R. R. Co.*, 12 I. C. C., 503, 505, in which case we said:

> The Commission does not approve the practice of some carriers of repaying advancements made by a shipper for the construction of a switch track by making an allowance to him of a definite amount on each carload of freight shipped to or from his manufacturing plant. Such an arrangement presents too much the appearance of a purchase of property by the carrier with transportation, which is contrary to the principles of the act. Undertakings of this nature ought to be evidenced by a written contract, a copy of which ought to be filed with the Commission. Although the payments to be made by the carrier to the shipper under such contracts may properly be determined or based on the number of carload shipments made to or from the industry, such payments ought not to be made out of the rate as each car is moved, but ought to be made out of available funds at the end of definite intervals, say, of six months or a year.

It would also seem to be contrary to the well-settled rule that nothing but money may lawfully be received in payment for trans-

portation. While the method of deferred payments is open to criticism in the respect stated, we find nothing in the record to warrant the assumption that the arrangement was not made in good faith, or that it has resulted in giving the Northern Commercial Company an undue advantage of any kind over its competitors.

THE INTEREST OF RESPONDENT RAILROADS IN MINES OR IN MINERALS WHICH THEY TRANSPORT.

Witnesses for the respondent railroads all testified that the railroads do not own or have any interest, direct or indirect, in mines or in any minerals which they transport. Complainants contend that the transportation of copper ore for the Kennecott Copper Corporation by the Copper River & Northwestern Railway violates section 1 of the act because (1) the Kennecott Copper Corporation, by virtue of its sole ownership of the stocks and bonds of the railroad company, is itself a common carrier, and (2) their intercorporate relationship gives to the railroad a prohibited interest in the copper mines and in the copper ore which it transports. The proposition first stated ignores the legal distinction between the ownership of corporate securities and the ownership of the corporate tangible property. The Copper River & Northwestern Railway Company is a separate and distinct legal entity, whose assets and whose rights and liabilities as a common carrier are wholly different from those of the Kennecott Copper Corporation. It has its own board of directors and officers who manage, direct, and control its operation and affairs. Nor does it appear that the act prohibits the mere ownership by a mining company of the stocks or other securities of a railroad over which its products are shipped. *U. S.* v. *D. & H. Co.*, 213 U. S., 366; *U. S.* v. *L. V. R. R. Co.*, 220 U. S., 257; *U. S.* v. *D., L. & W. Ry. Co.*, 238 U. S., 516; *Campbell's Creek Coal Co.* v. *A. A. R. R. Co.*, 29 I. C. C., 682, 693.

In the *Tap Line Cases*, 234 U. S., 1, the Supreme Court held that if the division of joint rates between the principal carrier and the tap line really amounts to a rebate or an unjust discrimination in favor of the tap-line owners, it is within the power and duty of the Commission to reduce such division to a proper point. The court said:

> Because we reach the conclusion that the tap lines involved in these appeals are common carriers, as well of proprietary as nonproprietary traffic, and as such entitled to participate in joint rates with other common carriers that determination falls far short of deciding, indeed does not at all decide, that the division of such joint rates may be made at the will of the carriers involved and without any power of the Commission to control. That body has the authority and it is its duty to reach all unlawful discriminatory practices

resulting in favoritism and unfair advantages to particular shippers or carriers. It is not only within its power, but the law makes it the duty of the Commission to make orders which shall nullify such practices resulting in rebating or preferences, whatever form they take and in whatsoever guise they may appear. If the divisions of joint rates are such as to amount to rebates or discriminations in favor of the owners of the tap lines because of their disproportionate amount in view of the service rendered, it is within the province of the Commission to reduce the amount so that a tap line shall receive just compensation only for what it actually does.

But, as we have seen, there is no discrimination by the Copper River road in favor of the copper corporation. Nor is it shown that any such discrimination is practiced by the Alaska Steamship Company, which, as stated, is principally owned by the copper corporation. The results from operation of the railroad and of the steamship line have been stated.

WHARFAGE RATES AND PRACTICES.

Complainants allege that respondents own or control the wharves at all the principal ports in Alaska and that they impose unreasonable and discriminatory wharfage rates, rules, and practices. The Pacific Coast Steamship Company and the Alaska Steamship Company each own or control a wharf at Juneau and they jointly own a wharf at Ketchikan. The American-Yukon Navigation Company owns wharves at numerous points along the Yukon River. The wharf at Skagway is owned by the Pacific & Arctic Railway & Navigation Company, and that at Cordova by the Copper River & Northwestern Railway Company. So far as the record discloses no other wharves in Alaska are owned or controlled by respondents. As a general rule the joint rates between Seattle and points in Alaska include wharfage charges. Local traffic between Cordova or Skagway and the interior and through traffic which moves on the combination of local rates is subject to wharfage charges at Cordova and Skagway in addition to the rate.

Practically no complaint was made by witnesses who testified concerning wharfage rates and practices except in regard to those obtaining at Valdez and Seattle. At Valdez respondents use the wharf of the Valdez Dock Company. The municipality of Valdez also maintains a wharf which, as appears from a petition filed in the record, certain residents of that place desire that respondents shall use. The reasons given by respondents for their refusal to use this wharf are that the water surrounding it is too shallow to accommodate their vessels; that the wharf is not properly equipped; that the municipality is financially irresponsible; and that there is no general complaint concerning the use of the Valdez Dock Company's

wharf or the wharfage charges which it imposes. Both wharves are equally convenient and accessible to shippers. That of the Valdez Dock Company is a substantial structure, on which are several warehouses equipped with fire protection and warm and cold storage rooms. The representative of the Valdez interests stated that the only basis of complaint is that its rates are higher than those of the municipal wharf. The latter rates fixed by the municipality range from 25 cents to 75 cents per ton. The wharfage rates and rules of the Valdez Dock Company are not filed with the Commission. The rates charged are said to be $1.60 per ton on general merchandise, $2 per ton on coal, $1 each on horses, mules, and cattle, 25 cents each on sheep and dogs, and $2.50 per ton on explosives. These rates are the same as the wharfage rates at Cordova, except that on coal, which is $1 per ton higher. The Valdez Dock Company also deals in coal, grain, and feed. Its president testified that the commercial and wharfage accounts are intermingled, and that he could not give any accurate information as to the wharfage revenues and expenses. He said, however, that without the earnings derived from its mercantile business the wharf would not pay operating expenses.

This Commission, of course, has no power to adjust the controversy between the town of Valdez and the steamship companies concerning the use of the municipal wharf. Neither can it accept the rates of the latter as a standard by which to judge the reasonableness of the rates charged by the Valdez Dock Company. It is not unusual for a municipality to provide and operate a public utility for the benefit of its inhabitants without much regard to the question of profit, and it may well be that the wharfage rates fixed by the municipality would be ruinous to a private wharf owner. It appears that the wharfage facilities of the Valdez Dock Company are adequate, conveniently situated, and open to the use of all on equal terms. Aside from its failure to file its wharfage rates and rules and to keep its wharfage business separate and distinct from its mercantile enterprises there is nothing of record to indicate that its practices are in contravention of the act.

The Port Commission of Seattle complains that respondents refuse to absorb wharfage charges on traffic over its docks, owned by the city of Seattle. The proportional rates of the steamship companies and the joint rail-and-water rates include Seattle wharfage charges on traffic received or delivered at docks which respondents own or control. The wharfage charges of the port commission are not on file, but it is stated that in the aggregate they are approximately the same as those applying at respondents' wharves. It is urged that as the rates include wharfage at respondents' own piers, the refusal to ab-

sorb wharfage charges on traffic handled over the docks of the port commission is unreasonable and discriminatory. The steamship companies, however, do not absorb wharfage charges at any outside piers, so that the wharves of the port commission are not discriminated against in that respect. There is nothing in this record which warrants us in finding the practice complained of to be unreasonable or unjustly discriminatory.

CONCLUSIONS.

Several of the respondents question on various grounds our jurisdiction over them or over certain phases of the complaint. The Northern Navigation Company, the Northern Commercial Company, and the Kennecott Copper Corporation deny the Commission's jurisdiction on the ground that they are not engaged in transportation; and the British Columbia-Yukon Railway Company, the British Yukon Railway Company, and the British Yukon Navigation Company ask to be dismissed because they are foreign corporations operating wholly within the Dominion of Canada. They concede that we may inquire into the reasonableness of the joint rates, published by the American lines, to which they are parties, but deny our authority to prescribe rates, regulations, or practices to be observed by them in the future. Complainants argue that as the capital stock of these corporations is held by the White Pass & Yukon Railway Company, Limited, and they are all under the same management and control, the Commission has full jurisdiction to regulate their rates and practices, and cites *U. S.* v. *P. & A. R. & Nav. Co.*, 228 U. S., 87, in support of that contention. That, however, was a criminal proceeding for violation of the antitrust laws and is not controlling here. In *Humboldt S. S. Co.* v. *White Pass & Yukon Route*, *supra*, we said:

> As has been seen, the steamship line from White Horse to Dawson is the property of an independent and foreign corporation, and the transportation conducted by it is wholly outside the United States. If the board of railway commissioners for Canada has no jurisdiction of that company and its charges, how could it be said that we have such jurisdiction? The line of railway from Skagway to White Horse is continuous and operated as such, but, as has been seen, it is owned by three separate corporations, one of which owns only that part which lies in the Territory of Alaska, and the other two of which are in Canadian territory and under the jurisdiction of Canadian laws and the Canadian board. The Commission has no extraterritorial jurisdiction or powers and it is not seen how we can assume to order or compel the British Columbia-Yukon Company or the British-Yukon Railway Company to join in through routes and joint rates with complainant or other carriers under our jurisdiction, or to regulate the charges of said companies.

See also *Carey Mfg. Co.* v. *G. T. W. Ry. Co.*, 36 I. C. C., 203; *Aetna Powder Co.* v. *Wabash R. R. Co.*, 39 I. C. C., 199; *Rates on High Ex-*

plosives to G. T. Ry. System Stations, 33 I. C. C., 567; *International Paper Co.* v. *D. & H. Co.*, 33 I. C. C., 270, and cases therein cited.

While these and other formal objections were urged by respondents, each of them willingly and fully responded to the Commission's inquiries in the proceeding of investigation, and the record shows in great detail all pertinent facts relating to their operations. In view of our conclusions herein it is not necessary to further consider the jurisdictional questions involved.

Upon all the facts of record we conclude and find that the rates attacked are not shown to be unreasonable and that, except the special rates accorded to cannery and mining companies, they have not been shown to be unjustly discriminatory. As stated, these special contract rates, which as to interstate traffic constituted an unlawful departure from the published tariff rates, were discontinued November 1, 1916. An order will be entered dismissing the complaint.

No. 8441.

UTAH-IDAHO MILLERS AND GRAIN DEALERS ASSOCIATION

v.

DENVER & RIO GRANDE RAILROAD COMPANY ET AL.

Decided May 17, 1917.

Upon argument the conclusions reached in the original report are affirmed.

G. H. Work for complainant.

Allan P. Matthew for defendants.

Seth Mann for San Francisco Chamber of Commerce, intervener.

REPORT OF THE COMMISSION UPON ARGUMENT.

MEYER, *Commissioner:*

At the request of the defendants this case was set for argument for the purpose of determining the merits of a petition for rehearing submitted by them in which we were requested to reverse or modify the conclusions reached in our original report, 42 I. C. C., 648. The several points relied upon by defendants in support of their petition will be separately considered.

1. The conclusions and order of the Commission are not responsive to the issue arising upon the complaint.

The defendants contend that the complaint brings into issue only the propriety of the so-called "differentials" between the rates on wheat and the rates on flour, and that no attack is made on the reasonableness *per se* of any of the rates; yet the Commission held that the rates on flour should not exceed by more than 5 cents per 100 pounds the *present* rates on wheat. This finding of course did not leave to defendants the option of effecting the prescribed spread by increasing the rates on wheat, but necessitated a reduction in the rates on flour.

An examination of the record shows clearly that the reasonableness *per se* of the rates was regarded by all of the parties as one of the issues at the hearing. In paragraph 6 of the complaint it is alleged that—

the maintenance of differentials between grain and its products as outlined in section 5, paragraphs A, B, C, and D (in which paragraphs the tariffs containing the rates on both wheat and flour are specifically referred to by their I. C. C. numbers) is unjust and unreasonable and in violation of sections 1, 2, and 3 of the act to regulate commerce because by maintaining such differentials defendants subject complainants and their traffic to unreasonable disadvantage and give undue preference to millers located at other points. * * *

This allegation was not framed as carefully as it might have been and the defendants contend that it is entirely too vague to be regarded as an allegation that the rates themselves are unreasonable, and that the only issue raised by the complaint is the reasonableness and propriety of the differentials. They admit, however, that the propriety of the differentials, as distinguished from the reasonableness of the rates themselves, could not be determined under section 1 of the act, and in the answer filed on behalf of the Western Pacific Railway and its receivers, responding to the sixth paragraph of the complaint, we read:

Answering paragraphs III to VI, inclusive, of the complaint (paragraph VI is the one above quoted), these defendants admit that the carload rates on flour, bran, and other grain products from points in Idaho and Utah to points in California and Nevada are higher than the rates on grain between such points in the amounts specified in the complaint, *but these defendants deny that such rates on flour, bran, or other grain products, or any thereof, are unjust, or unreasonable*, or that the difference between such rates, or any thereof, and the rates on grain, or any thereof, subjects the complainants or their traffic to unreasonable disadvantage or undue preference and deny that *the said rates on flour*, bran, or other grain products, or any thereof, *are in violation of any provision of the act to regulate commerce.*

The above answer was adopted *in toto* by the Denver & Rio Grande Railroad Company.

The prayer of the complaint, as amended, is as follows:

Wherefore, petitioner prays that defendants be severally required to answer the charges herein; and that after due hearing and investigation an order be made commanding the said defendants, and each of them, to cease and desist from the aforesaid violation of the said act to regulate commerce, and to establish and put in force and apply as maxima in the future to the transportation of flour and like products from Utah and Idaho points to points in Nevada and California, rates which shall not exceed the present rates on wheat contemporaneously in effect and to put in force and apply as maxima in the future to the transportation of bran and like products from points in Utah and Idaho to points in Nevada and California rates which shall (not) exceed the present rates on wheat between the same points; and that such other order or orders may be made as the Commission may consider proper in the premises and complainant's cause may appear to require.

The opening statement of the examiner at the hearing is as follows:

I will make a brief statement of the case as I understand it and I ask to be corrected if I do not state it properly.

It is alleged that the present differentials in excess of the grain rates maintained by the defendants for the transportation of grain products in carloads from points in Utah and Idaho to destinations in California and Nevada are unreasonable and unjustly discriminatory.

It is particularly alleged that the maintenance of higher rates on grain than on grain products gives an undue preference and advantage to millers located at the California terminals.

In the original complaint the Commission was requested to order the establishment of rates on flour and like products from Utah and Idaho points to destinations in Nevada and California which shall not exceed the *present rates* on grain by more than 5 cents per hundred pounds and to establish on bran and like products rates which shall not exceed *the present rates on wheat.*

The complaint has since been amended so as to pray for the same rates on flour as on grain.

Is there any objection to that statement of the complaint?

(No response.)

The defendants' contention that the only question presented for our determination upon this record is the propriety of the differential, seems to be answered in their own brief, from which we take the following:

The complaint in this proceeding is of the most comprehensive character. It attacks not only the *reasonableness* of the current structure of rates on grain and grain products from points of origin in Utah and Idaho to destinations in Nevada and California, but it also alleges that the adjustment is discriminatory.

Most of the exhibits introduced by the complainants at the hearing specifically attacked the rates on flour as being unreasonable. The very first line of the first exhibit shows the rate on flour from American Falls, Idaho, to San Francisco, Cal., and other points, and labels it "flour rate attacked." The second exhibit expressly says that "the flour rates from Utah-Idaho points to California points are unreasonable," and endeavors to prove it by comparing them with the fifth-class rates. The third exhibit is particularly addressed to the reasonableness *per se* of the rates. It compares the rates on flour here in issue with the rates to and from other points. That this exhibit was intended primarily to prove the unreasonableness of the rates on flour is indisputable; and any doubt on this score is removed by the statement plainly appearing on the face of the exhibit where the complainant, referring to one of the principal flour rates here in issue, says:

This rate of 60 cents on flour is precisely a protective tariff for the benefit of the California miller. No flour ever moves under it. This is called a paper rate by carriers. The defendants don't want any flour to move under it.

The fifth exhibit compares the ton-mile earnings under the flour rate attacked with the average ton-mile earnings on all traffic. Again on this exhibit the flour rate is designated "rate attacked." The exhibit explains its own purport by the following statement appearing on its face:

Ton-mile revenue on flour or grain is most competent in showing *the reasonableness* of rates on these commodities.

Ton-mile revenue on flour on hauls of this length should be much less than the average of the carrier making the haul.

The rates attacked show a ton-mile revenue much higher than the average.

An examination of this exhibit shows that it was introduced principally for the purpose of showing the unreasonableness of the rates.

Not only were these exhibits introduced without objection on the part of the defendants, but evidence was introduced on their behalf for the purpose of showing that the rates on flour are not unreason-

ably high. It was shown at some length, for example, that the rates on flour are materially lower than the fifth-class rates; that the class rates were established by this Commission; and that the rates on flour are lower than those on other fifth-class commodities such as beans, dried peas, canned goods, and pickles. In referring to this testimony the principal witness for the defendants said, at page 424 of the transcript—

> but the flour rate is certainly on a not unreasonable basis, and we can not afford to have the rate reduced.

A careful examination of the whole record shows that the reasonableness *per se* of the rates on flour was regarded by all of the parties as one of the principal issues raised by the pleadings, and although the belated explanation is now made that the exhibits introduced by the complainants were not objected to because the defendants felt that such objections would be unavailing if made, it is proper to observe that it was not only the right but the duty of the defendants to make such objections if they felt that evidence was being introduced beyond the scope of the issues as framed by the pleadings. The defendants further contend that the evidence introduced on their behalf with respect to the reasonableness *per se* of the rates was addressed, as a matter of fact, to the measure of the differentials; or, at least, that it was not intended to be directed to the measure of the rates themselves, but inasmuch as two of the answers specifically denied that the flour rates were unreasonable, we feel warranted in concluding that evidence apparently addressed solely to the level of the rates was intended to meet that issue.

2. The complainant failed to sustain the burden of proving that the existing differences between the rates on wheat and flour from points in Utah and Idaho to points in Nevada and California are unreasonable and discriminatory.

This exception goes to the very heart of the case. If the complainant failed to sustain the burden of proof in this respect it is clear that we erred in requiring the defendants to readjust the so-called differentials. The defendants base this exception on two distinct grounds: (1) The evidence fails to sustain the allegation made in the complaint to the effect that the differences between the rates on flour and the rates on wheat from points in Utah and Idaho to points in Nevada and California are unreasonable and discriminatory in that they make it possible for mills located at the California terminals to buy wheat in Idaho and Utah, ship it to the California milling points and transport the product to the markets in Nevada and California at a transportation cost from 12½ cents to 15 cents per 100 pounds less than the cost imposed upon the complainants. (2) "Turning to the Nevada situation, we find not a single syllable

of testimony offered in support of the allegations of the complaint." In view of the fundamental character of these exceptions we shall deal with them at some length, at the risk of repeating some of the observations made in our original report.

The relative commercial advantages and disadvantages of the millers in Idaho and Utah on the one hand and those in California on the other, have been the subject of much controversy on the present record. With respect to their relative transportation costs, we said in our original report, at pages 652 and 653:

> The defendants' contention that the present adjustment fairly equalizes the transportation cost as between the millers in California and those in Utah and Idaho is partially supported by the evidence of record. Both parties have selected Merced, Cal., as a typical destination point and have compared the cost to the California miller of laying down a barrel of flour at that point with the cost to his competitors in Utah and Idaho. It is assumed that the wheat in both instances originates at American Falls, Idaho. The rate on wheat from American Falls to Stockton, Cal., is 45 cents. If the wheat is milled at Stockton and the product forwarded to Merced the Stockton miller would be obliged to pay the local rate of 10¾ cents from Stockton to Merced, transit not being accorded in California. It requires 274 pounds of wheat to make a standard barrel of flour, 196 pounds. It would cost the Stockton miller $1.233 to get 274 pounds of wheat from American Falls to Stockton, and 21.07 cents to ship 196 pounds of flour from Stockton to Merced, making the total transportation cost approximately $1.44. The through rate on flour from American Falls to Merced is 70¾ cents, made by combination on Stockton. If the grain is milled at Ogden a transit charge of 2½ cents per 100 pounds is imposed, making the through charge 73¼ cents. The total transportation charge to the Ogden miller on 196 pounds of flour would therefore be $1.436, practically the same as the aggregate charge paid by the miller in Stockton. If other points of consumption are selected, the result is substantially the same.

The correctness of this observation has not been seriously challenged, but it should be considered in connection with two other facts of importance. In the first place, it is necessary for the Utah and Idaho millers to pay for the transportation from the field to the mill of that portion of the wheat which is not converted into flour. In the second place, southern California is a most desirable market for bran, and the California miller, after shipping the wheat to California and converting it into flour, can dispose of the bran at a good price almost at the door of his mill, while the Utah and Idaho millers have no such market for bran near the milling points, and must ship it to far distant points, particularly to California. That this gives a decided advantage to California millers is established by the evidence of record, and it doubtless accounts in part for the fact, also established, that Utah and Idaho flour has been practically excluded from the California markets. In view of these facts we think it unimportant that the complainant failed to prove that the transportation cost of flour to the Utah and Idaho millers exceeds the cost to the California millers by the exact amounts suggested in the complaint. If the commercial conditions are to be given any con-

sideration at all, the one outstanding feature of the situation is the inability of the Utah and Idaho millers to reach the California markets with any success.

The defendants' contention that our finding with respect to the rates to Nevada points was not supported by any evidence is incorrect. Not only was some evidence submitted with respect to the Nevada situation, but that evidence was sufficient to show the indefensible character of the rates to Nevada points. Not only was evidence introduced showing the rates on wheat, bran, and flour from points in Utah and Idaho, but the relative advantage and disadvantage of the Utah-Idaho millers and the California millers in the markets of Nevada was exhaustively covered by the evidence. Reference will be made to some of the evidence relating to the Nevada situation.

In the first place it is important to observe that throughout this proceeding the attention of the parties has been addressed particularly to the rates of 35 cents on wheat and 50 cents on flour from the Utah common points to a large blanketed territory in California and Nevada. The rate of 50 cents on flour is blanketed as far east as Avenel, Nev. Indeed, the blanket covers such a large part of the states of Nevada and California that Reno, Nev., is practically in the center of the group. All of the evidence of record, therefore, bearing upon the rates of 35 cents and 50 cents, and on the differential of 15 cents, may properly be regarded as applying as well to the Nevada rates as to the California rates.

The following table, compiled from an exhibit filed *by the defendants*, shows the rates on wheat and flour from Ogden and from American Falls, Idaho, to points in Nevada. The distances from Ogden and the earnings per ton-mile and per car-mile derived from the earnings on flour, are also shown:

To—	From Ogden, Utah.					Differential.	From American Falls, Idaho.		Differential.
	Miles.	Rates.		Flour earnings.			Rates.		
		Flour.	Wheat.	Ton-mile.	Car-mile.		Flour.	Wheat.	
		Cents.	*Cents.*	*Mills.*	*Cents.*	*Cents.*	*Cents.*	*Cents.*	*Cents.*
Montello, Nev	120	30	25	50	75	5	43	35	8
Cobre, Nev	137	30	25	43.8	65.7	5	43	35	8
Wells, Nev	175	38	25	43.4	65.2	13	43	35	8
Deeth, Nev	193	40	25	41.4	62.1	15	45	35	10
Halleck, Nev	205	45	25	43.9	65.8	20	50	35	15
Elko, Nev	226	45	25	39.8	59.7	20	50	35	15
Carlin, Nev	248	50	30	40.3	60.4	20	55	40	15
Palisade, Nev	257	50	30	38.9	58.3	20	55	40	15
Beowawe, Nev	274	50	30	36.5	54.7	20	60	40	20
Argenta, Nev	296	50	30	33.8	50.8	20	60	40	20
Fallon, Nev	510	58	35	22.7	34.1	23	68	50	18
Wabuska, Nev	534	71	42.5	26.59	39.8	28.5	81	57.5	23.5
Mina, Nev	623	85	54.75	27.2	40.9	30.25	90	69.75	20.25
Wadsworth, Nev	509	50	35	19.6	29.4	15	60	45	15
Sparks, Nev	536	50	35	18.6	27.9	15	60	45	15
Reno, Nev	539	50	35	18.5	27.8	15	60	45	15

Attention is directed particularly to the high earnings yielded by the rates to these Nevada points. The varying differentials are also worthy of note. The defendants concede that there can be no justification for such an irregular and inconsistent adjustment as this record reveals.

An exhibit filed by the defendants shows the rates, the distances, and the volume of the flour movement to Nevada and California points from Utah and Idaho, from the California terminals and from Reno, Nev., via the Southern Pacific, for the year ended June 30, 1915. From Utah and Idaho there were 2,315 tons, from California terminals 862 tons, and from Reno 430 tons. This exhibit is intended to show, and does show, the advantage which the Utah and Idaho millers enjoy over their California competitors in Nevada, especially in the eastern part of the state. The record shows that the production of wheat in California has fallen off decidedly in recent years, and the California millers must now look to distant markets, particularly Utah and Idaho, for their wheat supply. In supplying the markets of Nevada with flour the California millers purchase the wheat in Utah or Idaho, ship it to California, mill it into flour, and ship the product back to Nevada. Under these circumstances the relative disadvantage of the California millers in the Nevada markets can readily be understood.

Much other evidence relating to the Nevada situation was introduced at the hearing.

3. The Commission's finding that the rate adjustment against which the complaint is directed is discriminatory as against the members of the complainant association is not sustained by the record.

The defendants concede that "the point here made differs only superficially from that immediately preceding," and we shall not consider it further.

4. The Commission erred in finding that the prevailing differences between the rates on wheat and flour from points in Utah and Idaho to points in Nevada and California are intended to equalize commercial conditions and that the carriers thereby have attempted artificially to regulate and control the movement of flour by so adjusting their rates of transportation as to bring about that result.

The motives which may have prompted the carriers in establishing the rate adjustment here assailed are not sufficiently controlling to warrant an extended examination of them. The complainant openly challenges the whole rate structure as a "protective tariff" framed for the benefit of the California millers and as an "iron wall" so constructed as to exclude the Utah and Idaho millers from the California markets. The record abundantly shows that the differentials

were excessive and inconsistent, and that principally because of them the complainant and its members have been practically shut out of the California markets. At the hearing counsel for the defendants said:

Our efforts as carriers in this matter have been entirely to produce an equality between these manufacturing concerns. We have sought to do it in every instance, and we think successfully.

It is true that two witnesses for the defendants expressed the view that the rates were justified by the transportation conditions; but the record as a whole shows that the rate structure, whether so intended by the defendants or not, has had the effect of preventing Utah and Idaho flour from finding a place in the markets of California. In this sense the rates have constituted a "protection" to the California millers and a prejudice to the Utah and Idaho millers. After a careful review of the evidence we deem it unnecessary to modify the statements in our original report.

5. The Commission erred in finding that the current rates on flour from points in Utah and Idaho to points in Nevada and California are excessive.

In our original report we said with respect to the reasonableness of the rates:

Evidence addressed to the reasonableness *per se* of the rates on flour here in issue show that they are relatively high. From Ogden to South Vallejo, Cal., 754 miles, the rate on flour is 50 cents, as compared with a rate of 28½ cents from Great Falls, Mont., to Seattle, Wash., 865 miles. Similarly the rate from Pocatello, Idaho, to San Francisco, 917 miles, is 60 cents, as compared with a rate of 28½ cents from Judith Gap, Mont., to Seattle, 986 miles. Other comparisons lead to the same conclusion. The principal witness for the defendants admitted that the transportation conditions between Montana and the Pacific coast are fairly comparable with those between Utah and California. The only explanation given for the wide differences in the rates is that the rates from Montana involve, in some instances, only a one-line haul as compared with a two-line haul from points in Idaho to California, together with a statement of a very general character that the rates westbound from Montana are unduly low.

The rate on flour from Omaha to San Francisco via Ogden, 1,773 miles, is 75 cents, as compared with a rate of 60 cents from American Falls to San Francisco for a distance of 942 miles. The rate from Omaha, however, applies in connection with a minimum weight of 50,000 pounds. In this connection it may be noted that if the flour rates were reduced to the wheat basis complainant would not object to an increase to 40,000 pounds in the minimum weight to Nevada points and to 50,000 pounds to California points upon condition that certain carload mixtures are accorded which are not provided for in the tariffs now in effect.

The rate on flour from Ogden to Los Angeles is 45 cents, 5 cents lower than the rate to San Francisco, although the distance to Los Angeles is greater by 38.4 miles, and although an exhibit filed by defendants explains in some detail the unusual operating difficulties encountered on the San Pedro, Los Angeles & Salt Lake Railroad, which is the short line from Salt Lake City to Los Angeles. From American Falls the rate on flour to Los Angeles is 50 cents, the distance through Salt Lake City being 979.7 miles. The rate assailed from Ogden to San Francisco is also 50 cents for a distance

of 782 miles. In connection with this comparison it is proper to observe that the rate of 50 cents from Ogden applies not only to San Francisco and certain other California terminals, but to intermediate points in California and as far east as Avenel, Nev., the territory of destination being blanketed for a distance of 550 miles. The distance from Ogden to Reno, Nev., which is near the center of the blanket, is 539 miles. The present rate for that distance yields a revenue per ton-mile of 18.5 mills and an earning per car-mile, based on the minimum weight of 30,000 pounds, of 27.8 cents.

The complainant further shows that the earnings per ton-mile which the carriers derive from the rates assailed are almost twice as high as those yielded by the rates from Montana points to the Pacific coast terminals, and that the earnings on flour under the rates here in issue exceed the average ton-mile revenue of the carriers on all traffic.

The following table, the rates and distances in which are taken from an exhibit filed by the defendants, shows the earnings per ton-mile and per car-mile yielded by the rates on flour from Ogden to points in Nevada and California in effect at the time of the hearing. It is important to note that the earnings per car-mile are based on the minimum weight of 30,000 pounds, although the complainant states that its members could load much more heavily:

From Ogden, Utah, to—	Rate.	Miles	Revenue per ton-mile.	Revenue per car-mile.
	Cents.		*Mills.*	*Cents.*
Elko, Nev	45	226	39.8	59.7
Reno, Nev	50	539	18.5	27.8
Truckee, Cal	50	574	17.4	26.1
San Francisco	50	782	12.8	19.2
Paso Robles, Cal	70	951	14.3	22.4
Red Bluff, Cal	67.5	798	17.0	25.5

The following table, compiled from an exhibit filed by the complainant, shows how the rate of 50 cents on flour from Ogden to Reno, Nev., and San Francisco, Cal., compares with the rates from points in Montana to Seattle, Wash.:

From—	To—	Miles.	Rate.
			Cents.
Ogden, Utah	Reno, Nev	539	50
Do	San Francisco, Cal	782	50
Mondak, Mont	Seattle, Wash	1,157	37
Great Falls, Mont	.....do	867	22.5
Lewiston, Mont	.....do	983	22.5

It is but fair to say, in connection with this table, that the defendants challenge the propriety of these comparisons because the complainant failed to show affirmatively that grain shipped from the grain fields of Montana to Seattle moves under conditions similar to those under which grain is transported from Utah and Idaho points to California; and the defendants raise the further point, although no specific evidence has been submitted to support it, that

the rates from Montana points to Seattle are unduly low. Conceding, for the purposes of this case, that those rates are low, the disparity between them and the rates here assailed is striking; and although it is true that we should hesitate to accept such comparisons as controlling, if the Montana rates are depressed, we can not agree that they are wholly without value. It is true that the complainant failed to show under what conditions grain moves from Montana, but the principal witness for the defendants admitted that the transportation conditions are substantially similar, although he contended, as previously stated, that the rates from Montana are low.

6. The Commission erred in finding that the current rates on wheat from points in Utah and Idaho to points in Nevada and California are not unreasonably low and that such rates should serve as a measure for flour rates between the same points.

Exhibits submitted by the complainant show that it is customary throughout the western territory, except in the region with which we are here dealing, for the wheat rates to serve as a basis for the flour rates. In many instances the flour rates are the same as the wheat rates, in other instances somewhat higher, but such high differentials as those assailed in the proceeding now before us are quite unusual where the commodities move in volume.

Taking American Falls, Idaho, as a representative point of origin, the complainant shows that the rates on flour from that point published by the Oregon Short Line to various parts of the United States are approximately the same as the rates on wheat, except to points in Nevada and California. The complainant's exhibit is in part as follows:

Rates on wheat and flour in carloads from American Falls, Idaho, to points designated.

To—	Flour.	Wheat.	Differential.
	Cents.	*Cents.*	*Cents.*
Certain Nevada points	60	45	15
California terminals	60	45	15
Los Angeles, Cal	50	45	5
Portland, Oreg	40	35	5
Denver, Colo	35	35	None.
Missouri River points	45	45	None.
Minneapolis, Minn	50	49	1
Peoria, Ill	50.5	50.5	None.
Chicago, Ill	52	52	None.

(The exhibit also shows that the rates on flour to points in the states of Arkansas, Louisiana, and Oklahoma are practically the same as the rates on wheat, the differentials varying from nothing to 3 cents.)

In considering the reasonableness of the rates on wheat here before us it should be borne in mind that wheat moves in great volume from the fields of Utah and Idaho to the California terminals. Furthermore, an examination of the tariffs shows that the present rate from American Falls to California terminals slightly exceeds the rate in

effect in 1900, and that the rate from Ogden is much higher than it was at that time. The tariff history of these rates is shown in the following table:

Rates in cents per 100 pounds on wheat in carloads from Ogden, Utah, and American Falls, Idaho, to San Francisco and certain other California terminals.

From Ogden.		Minimum.	From American Falls.		
Effective date.	Rate.		Effective date.	Rate.	Minimum.
	Cents.	*Pounds.*		*Cents.*	*Pounds.*
Jan. 1, 1900	[1] 20	(2)	Aug. 21, 1899	43	[3] 60,000
Oct. 17, 1904	[1] 30	(2)	Apr. 27, 1903	43	(4)
Jan. 1, 1905	[1] 30	(2)	Oct. 17, 1904	53	(4)
Aug. 25, 1906	[1] 35	(2)	Mar. 3, 1906	53	(4)
Sept. 20, 1907	[5] 35	(2)	Feb. 19, 1907	50	40,000
Nov. 11, 1907	[5] 35	30,000	Aug. 15, 1909	45	60,000
Dec 5, 1908	[5] 35	30,000			
July 18, 1914	[5] 35	30,000			
Oct. 20, 1914	[5] 35	[6] 50,000			

[1] On wheat in sacks.
[2] Marked capacity.
[3] Except that on cars of less capacity than 60,000, minimum will be marked capacity.
[4] Marked capacity, but not less than 30,000.
[5] In bulk or in sacks.
[6] From Oct. 20 to Nov. 8, 1914, the Southern Pacific tariff prescribed a minimum of 30,000 pounds, while another tariff, published by agent Gomph as I. C. C. No. 188, prescribed a minimum of 50,000.

In this territory wheat loads from 60,000 pounds to 110,000 pounds to the car. An exhibit filed by one of the California interveners shows that the average loading of 51 cars of wheat shipped from points in Idaho to Los Angeles, Cal., was 90,921 pounds. The following table shows the earnings per car-mile afforded by the rates on wheat from Ogden to representative points, based on car loadings of 60,000 pounds and 90,000 pounds, these weights having been used by the defendants as a basis for determining the earnings on this traffic:

From Ogden to—	Miles.	Wheat rate.	Car-mile revenue, 60,000 pounds.	Car-mile revenue, 90,000 pounds.
		Cents.	*Cents.*	*Cents.*
Montello, Nev	120	25	125	187.5
Wells, Nev	175	25	85.7	128.6
Elko, Nev	226	25	66.4	99.5
Carlin, Nev	248	30	72.6	108.9
Palisade, Nev	257	30	70	105.1
Reno, Nev	539	35	38.9	58.4
Truckee, Cal	574	35	36.6	54.9
San Francisco, Cal	782	35	36.6	40.3
Bakersfield, Cal	965	48.75	30.3	45.5
Salinas, Cal	883	44.5	30.2	45.4
Paso Robles, Cal	981	49.5	30.3	45.4

Attention is called to the earnings which the carriers derive from these rates. We did not require any reduction in the rates on wheat, but concluded that "the present rates on wheat are not unreason-

ably low," and that they should not be increased to effect the prescribed spread between wheat and flour. A reexamination of the record, and particularly of the earnings which the carriers derive from this traffic, confirms the correctness of our original conclusion.

7. The Commission erred in predicating its conclusions in part upon the fact that the earnings derived by the carriers from the flour rates exceed the average ton-mile revenue of the carriers on all traffic.

Had our conclusions been based solely, or even principally, on this evidence, they would doubtless conflict with our policy in previous cases cited by the defendants, where we said, in effect, that if the reasonableness of any rate could be gauged solely by comparing it with the average earnings of the carriers on all traffic, the inevitable result would be to bring all rates to a common level. An examination of our original report shows that undue emphasis was not laid on the evidence in question. An exhibit introduced by the complainant laid considerable emphasis on this point, and it was entirely proper that we should give it such notice as it deserved. This evidence, though not especially helpful, was clearly relevant to the issues.

8. The Commission erred in rejecting the defendants' comparisons between the rates on flour and the rates on other fifth-class commodities between the same points.

We did not reject these comparisons. In our original report we said:

> The defendants compare the rates on flour with the rates on such other fifth-class commodities as pickles, mineral water, apples, beer, canned goods, and beans. The rates on these commodities being materially higher, the defendants contend that the rates on flour must be deemed reasonably low. This contention overlooks the fact, however, that wheat and flour move almost invariably on commodity rates which bear no definite relation to the class rates. In the absence of more satisfactory proof of similarity of transportation conditions, these comparisons are of little value.

A reexamination of the record convinces us of the correctness of this observation.

9. The Commission erred in requiring a readjustment of the rate structure which will result in lower carload revenue on shipments of flour than on shipments of wheat.

The record shows that wheat loads much more heavily than flour, and that the rates on flour and wheat in many parts of the west are nearly the same. It necessarily follows that the earnings per car on flour are less than on wheat. Shipments of wheat moving from Utah and Idaho to California load very heavily, but the loading of flour is little in excess of the prescribed minimum weight of 30,000 pounds. The complainant contends that this is due in large part to the fact that flour produced in Utah and Idaho has been unable to reach the California markets successfully, and that the loading doubtless would be much heavier if the movement were greater. The com-

plainant concedes that the prescribed minimum weight of 30,000 pounds is lower than that prescribed in other territories. In our original report we said:

> The suggestion made by the complainant that the minimum weight on flour might be increased, with more liberal provision as to carload mixtures, should have the careful consideration of the carriers.

The adoption of that suggestion would increase the earnings per car on flour, and would remove in large measure the disparity between the earnings on flour and wheat occasioned by the heavy loading of the latter commodity.

10. *The Commission's conclusions and order are invalid because they represent an attempt to fix rates in response to commercial conditions and to extend the advantages of a particular industry upon considerations which are devoid of transportation significance.*

The record shows, as previously stated, that under the rate adjustment made by these carriers Utah and Idaho flour was virtually barred from the California markets, and counsel for the defendants stated at the hearing that the carriers' sole effort had been to so adjust the rates as to produce an equality between the different millers in every instance; an equality which is shown, however, to be more apparent than real. It is true that in reaching our conclusion in this case we gave consideration to the evidence showing that the members of the complainant association were unable to dispose of their product in California under the rates assailed. We should clearly have failed in our duty if we had entirely rejected such evidence. We made no attempt "to fix rates in response to commercial conditions." We endeavored, rather, to make the rates more truly reflect the transportation conditions because we found that the defendants' failure to do so resulted in unreasonable rates and in undue preference to the California millers, to the undue prejudice of the complainant and its members. Furthermore, the condition of an industry has an influence upon the ability of a commodity produced by that industry to bear a rate, which in turn may have a bearing upon the reasonableness of the rate charged.

Upon reconsideration of the whole record we conclude that we should not modify in any way the conclusions reached in our original report. An order having already been entered denying a petition for rehearing filed by the defendants, no further order is required.

Fourth Section Applications Nos. 639 et al.

RATES FROM NEW ORLEANS AND GALVESTON TO MISSOURI RIVER CITIES.

Submitted November 18, 1915. Decided May 17, 1917.

Carriers engaged in transporting traffic from New Orleans, La., and Galveston, Tex., to Kansas City, Mo., Omaha, Nebr., Sioux City, Iowa, and other Missouri River cities through the territory west of the line of the Kansas City Southern Railroad, seek authority to continue lower rates on domestic and import business to the said points than rates contemporaneously in effect on like traffic to intermediate points in Kansas; *Held:*

1. **Carriers, whose routes are reasonably direct, are not justified in charging higher rates to intermediate points than to Missouri River cities. Fourth section relief denied.**
2. **Carriers, whose lines are 15 per cent or more longer than the direct line, authorized to continue lower rates from New Orleans and Galveston to Missouri River cities than to intermediate points in Kansas.**

W. F. Dickinson, *Henry G. Herbel*, *Fred G. Wright*, *T. J. Norton*, *A. A. Hurd*, *F. H. Wood*, *H. A. Scandrett*, *A. P. Humburg*, *C. S. Burg*, *Thomas Bond*, *J. W. Allen*, and *G. W. Hamilton* for applicants.

Joseph L. Bristow, *A. E. Helm*, and *H. O. Caster* for the Public Utilities Commission of the State of Kansas.

H. D. Driscoll for Topeka Traffic Association.

Martin E. Casto for Wichita Business Association.

E. H. Hogueland for Hutchinson Traffic Bureau and Coffeyville and Independence wholesalers.

W. V. Hardie for Oklahoma Traffic Association.

Report of the Commission.

By the Commission:

This proceeding involves the rates on classes and commodities from New Orleans and Galveston, Tex., to Omaha, Nebr., Kansas City, Mo., and other Missouri River points which are lower than rates contemporaneously applicable on like traffic to Anthony, Arkansas City, Coffeyville, Emporia, Hutchinson, Independence, Lawrence, Salina, Topeka, Wichita, Winfield, and other intermediate points in the state of Kansas.

By appropriate applications all carriers participating in traffic from New Orleans and Galveston to the territory described asked

for relief from the long-and-short-haul provision of the fourth section in order that they might continue this adjustment of rates.

At the hearing witnesses for the applicants stated that the Kansas City Southern and other carriers operating routes from New Orleans through the territory east of the line of the Kansas City Southern did not require relief, as they did not desire to maintain rates from New Orleans to intermediate points which exceeded rates to Kansas City and other Missouri River cities. These petitions are opposed by the Public Utilities Commission of the state of Kansas and traffic and commercial associations of the cities of Topeka, Hutchinson, Coffeyville, and other points in Kansas.

The principal routes operating west of the Kansas City Southern via which relief is sought are the Atchison, Topeka & Santa Fe; St. Louis, Iron Mountain & Southern and Missouri Pacific; Chicago, Rock Island & Pacific; and Missouri, Kansas & Texas. The three lines first named will be referred to, respectively, as the Santa Fe, Missouri Pacific, and Rock Island. The relief sought by these applicants is in respect to rates on import as well as on domestic traffic from the Gulf ports named. The two classes of rates will be discussed separately, and we shall take up first the rates applicable on domestic traffic.

Except when otherwise provided, rates stated herein are in cents per 100 pounds.

The Missouri River cities involved in this proceeding are divided into three general groups. The first of these, which we will refer to as the Kansas City group, includes Kansas City and St. Joseph, Mo., and Atchison and Leavenworth, Kans. The second, or Omaha group, consists of Omaha, Plattsmouth, and Nebraska City, Nebr., and Council Bluffs, Iowa, and the third, or Sioux City group, includes Sioux City, Iowa, and South Sioux City, Nebr., and other points in the immediate vicinity. The class rates from New Orleans to the Omaha and Sioux City groups are made differentials over the rates to the Kansas City group, as follows:

	1	2	3	4	5	A	B	C	D	E
Omaha group	5	5	4	4	3	3	3	3	3	3
Sioux City group	10	10	8	8	5	5	5	5	5	5

This basis results in the following rates from New Orleans to the points named:

	1	2	3	4	5	A	B	C	D	E
Kansas City group	110	85	65	53	38	42	37	27	24	23
Omaha group	115	90	69	57	41	45	40	30	27	26
Sioux City group	120	95	73	61	43	47	42	32	29	28

In passing it may be stated that rates to other points in this same general territory not situated on the Missouri River appear also to be based on the Kansas City rates. Among these are rates to Cedar Rapids and Des Moines, Iowa, Lincoln, Nebr., Sioux Falls, S. Dak., etc. The evidence introduced by applicants in defense of this adjustment is devoted almost exclusively to the rates from New Orleans to Kansas City.

From New Orleans to Kansas City there are numerous routes, all of which involve a haul over two or more lines. The two most direct routes are:

	Miles.
(1) Louisiana Railway & Navigation Company to Shreveport, and thence via Kansas City Southern	868
(2) Illinois Central to Memphis, and thence via St. Louis & San Francisco	878

There are also several routes via the Illinois Central to St. Louis and thence via the Wabash and other lines extending from that point to Kansas City. The distance via St. Louis and the Wabash is 995 miles. As stated before, these lines do not ask authority to charge rates to intermediate points which exceed the rates to Missouri River cities.

Some of the principal routes of the applicant carriers are as follows:

	Miles.
(1) Louisiana Railway & Navigation Company to Shreveport, and thence via Missouri, Kansas & Texas	940
(2) Texas & Pacific to Ferriday, and thence via St. Louis, Iron Mountain & Southern and Missouri Pacific via Coffeyville, Kans	975
(3) Texas & Pacific to Fort Worth, and thence via the Santa Fe	1,116
(4) Texas & Pacific to Fort Worth, and thence via the Chicago, Rock Island & Pacific	1,139

The number of routes could be multiplied by using different intermediate or terminal carriers. Since, however, the conditions existing on all of them are practically the same in principle and differ only in degree, we shall confine our discussion to typical routes, which will suffice to illustrate the general situation and have selected for this purpose the two first named. The class rates to representative intermediate and terminal points on these routes are shown in the following tables:

ROUTE NO. 1.

From New Orleans to—	Miles.	1	2	3	4	5	A	B	C	D	E
Chetopa, Kans	780	125	106	85	70	50	54	47	35	30	28
Oswego, Kans	789	125	106	85	70	50	54	47	35	30	28
Parsons, Kans	808	135	106	85	70	50	54	47	35	30	28
Erie, Kans	819	137	110	86	72	51	55	47	35	30	[illegible]
Moran, Kans	845	134	106	84	68	49	53	46	35	30	27.5
Kincaid, Kans	857	134	106	84	68	49	53	46	35	30	27.5
Selma, Kans	861	134	106	84	68	49	53	46	35	30	27.5
Paola, Kans	897	110	86	65	53	38	42	37	27	24	23
Kansas City, Mo	940	110	85	65	53	38	42	37	27	24	23
Omaha, Nebr. (via C., B. & Q.)	1,134	115	90	68	57	41	45	40	30	27	25

ROUTE NO. 2.

From New Orleans to—	Miles.	1	2	3	4	5		B	C	D	E
Coffeyville, Kans.	[1]777	137	119	94	77	56	60	50	38	32	29.5
Independence, Kans.	796	137	121	96	78	57	61	50	38	32	29.5
Neodesha, Kans.	810	137	121	96	78	57	61	50	38	32	29.5
Roper, Kans.	829	137	117	93	76	55	59	49	37	32	29
Yates Center, Kans.	847	137	117	93	76	55	59	49	37	32	29
LeRoy, Kans.	863	137	115	92	75	54	58	49	37	32	29
Garnett, Kans.	890	135	108	86	70	50	54	47	35	30	28
Osawatomie, Kans.	914	134	106	84	68	48	53	46	35	30	27.5
Kansas City, Mo.	975	110	86	65	53	38	42	37	27	24	25
Omaha, Nebr.	1,173	115	90	69	57	41	45	40	30	27	26

[1] A more direct route to Coffeyville is via L. R. & N., Shreveport, K. C. S., Sallisaw, St. L., I. M. & S., and Mo. Pac. The distance via this route is 713 miles.

The record shows that the rates from New Orleans to the points in Kansas were established originally with a view to providing a scale of rates to apply on New Orleans traffic corresponding to the rates from Chicago to the same territory. In 1891 the New Orleans lines adopted as the basis for rates from New Orleans to Kansas points the scale of rates in effect from Chicago, but not less than the rates from Texas common points and not more than the combination of local rates. However, the lines from New Orleans were unable to observe this basis in all cases, as none of them reached Kansas territory via their own rails and they were not always able to obtain the concurrence of their connections in rates from New Orleans equal to the rates from Chicago. At the time this basis was adopted the routes used were those operating through Kansas City, Mo., and other lower Missouri River points and via these routes the rates from New Orleans graded up from the Missouri River just as they did from Chicago. Subsequent to the establishment of this basis, by the construction of new lines in the territory south and west of the Missouri River, new routes were opened through the states of Arkansas, Oklahoma, and Texas. It is with these routes that we have to deal in this proceeding, as the traffic moving via such routes approaches the Missouri River from the south and west, and thus passes through higher rated points to reach Kansas City and other Missouri River cities and points immediately west thereof to which rates are on a lower basis.

While it does not appear that the construction of new lines and the subsequent opening of new routes to Kansas territory resulted in any material change in the general basis of rates to points in Kansas, it did result in materially shortening the distance from New Orleans to a portion of that territory. A striking example of this is afforded by the Kansas City Southern in connection with the Louisiana Railway & Navigation Company, which now form the shortest route from New Orleans to the Missouri River. The Kansas City Southern extends from Shreveport to Kansas City along the Arkansas-Oklahoma and Missouri-Kansas bound-

ary lines. North of the southern boundaries of Missouri and Kansas it is intersected by east and west lines of the St. Louis & San Francisco, Santa Fe, Missouri Pacific, and others, and thereby affords a route to stations on these lines shorter than those formerly available. The rates to points on the Kansas City Southern do not exceed the rates to Kansas City and rates to points on these cross lines in Kansas grade up from the junction points with the Kansas City Southern toward the west just as they do from Kansas City. As a result of this condition the rates to points in eastern Kansas where the east and west lines are intersected by lines approaching the Missouri River from the south and west are often lower than rates to intermediate points on the latter lines. For example, the Missouri, Kansas & Texas running north through Paola, Kans., to Kansas City crosses the east and west line of the Missouri Pacific at Moran, Kincaid, and Salina, Kans. The rates to these points are lower than to intermediate points, as will be seen from the table on page 729 of this report.

Carriers were unable to throw much light on the circumstances surrounding the establishment of the rates from New Orleans to the Missouri River cities prior to the establishment of the present basis, which has been in effect since 1900. They contend, however, that these rates have always been influenced and affected by competition of lines operating on the Mississippi and Missouri rivers. It is asserted that these rivers have been used as a means of transportation since the first settlements along their banks and that traffic moved freely by water between points on the Missouri River and New Orleans for many years prior to the building of the railroads. When through all-rail routes were opened the railroads endeavored to obtain a share of this traffic by meeting the prevailing rates for water transportation, and this, it is claimed, necessitated the establishment by the rail lines of a low scale of rates. The evidence shows that competition by water gradually diminished, and by the year 1900 had almost disappeared; but throughout the year 1901 some traffic continued to move by barge from New Orleans to St. Louis and thence by rail to Kansas City at joint through rates to which the rail lines were parties.

It was at this time and under these circumstances that a general conference was held between representatives of the western trunk lines and the New Orleans terminal lines at which the question of a revision of the rates from New Orleans to Kansas City was considered. This conference was held at New Orleans January 4, 1900. The class rates from New Orleans to Kansas City at that time were higher than those at present in effect. It was decided to reduce

these rates for the following reasons, which are stated in the preamble to the resolution providing for the revision:

> The initial lines cited attention to the present adjustment of class rates from New Orleans to points in western trunk line territory, with the statement that the present rates were merely paper rates, and it was due to that fact, the existence of so many commodity rates. With a fair rearrangement of the class rates, the opinion was expressed that the commodity list could be very materially reduced by their entire elimination and restoration to class basis.

Following this conference the present basis of rates from New Orleans to the Missouri River cities was established.

It was alleged by the applicants that several causes contributed to the establishment and required the maintenance of these rates. But perhaps the most potent of these causes has been the ever present possibility of the revival of competition by water lines which they feared would be renewed if rates were made higher than the scale adopted. Other causes that are said to have influenced the rates from New Orleans to Kansas City was the competition with Chicago, St. Louis, and other cities in the middle west for the Kansas City trade, which was given force and effect by the lines serving those points, generally referred to as market competition; also the competition between carriers from the same points of origin to Kansas City, or carrier competition. Kansas City is served from all directions by lines terminating at or extending through it to points beyond, and it is claimed that the intense rivalry between these lines for Kansas City business has operated to depress the rates to that point, not only from New Orleans, but from other directions as well.

During the decade following the establishment of the present basis of rates to the Missouri River cities competition by water disappeared, but within the past five years has been revived to some extent to Kansas City. During the year 1912 the Kansas City & Missouri River Navigation Company began to operate between St. Louis and Kansas City and at a later period the Atlas Transportation Company between New Orleans and St. Louis and other points on the Mississippi River. These two lines interchange traffic at St. Louis and freight may now be shipped through by water from New Orleans to Kansas City, but no regular schedule is maintained. The through rates charged by these water lines are based on the scale of rates in effect all rail and are approximately 80 per cent of the all-rail rates. For example, the class rates from New Orleans to Kansas City via rail and via water are as follows:

	1	2	3	4	5	A	B	C	D	E
All rail	110	85	65	53	38	42	37	27	24	23
Water	88	68	52	42.4	30.4	33.6	29.6	21.6	19.2	18.4

The rates of the water lines on commodities bear the same relation to the all-rail rates as the relation between the class rates. Rates on representative commodities are as follows:

	Alcohol, denatured.	Coffee.	Molasses.	Sugar
All rail	33	35	30	32
All water	26.[illegible]	28	24	25.[illegible]

It was shown at the first hearing in this proceeding that during the preceding 90 days these water lines transported from New Orleans to Kansas City 400 barrels of molasses, 250 sacks of coffee, several shipments of sugar, the exact quantity of which was not known, and about three carloads of miscellaneous freight. In respect to the facilities of the line operating between Kansas City and St. Louis attention was called to the report of the Commission in *Kansas City-Missouri River Navigation Co.* v. *C. & O. Ry. Co.*, 34 I. C. C., 67, 69, wherein we said:

The navigation company engages in the transportation of all classes of freight between Kansas City and East St. Louis and intermediate points.

No evidence was introduced by petitioners in regard to the equipment and facilities of the Atlas Transportation Company. It was pointed out, however, that the Commission has already considered the question of water competition and its influence upon rates of the rail lines from St. Louis to New Orleans in *Fourth Section Violations in the Southeast*, 30 I. C. C., 153, and granted relief because of that condition.

The protestants contend that the competition of this water route does not influence the rates to Kansas City and assert that it is simply put forward as a pretense to justify the discrimination against the intermediate points. The testimony as a whole seems to support their contention as to the effect of this competition. It does not appear that this water route between New Orleans and Kansas City has made any serious inroads upon the business of the rail lines from New Orleans.

Manifests showing the lading of some of the vessels operating between St. Louis and Kansas City were introduced by petitioners, and these indicate the movement of considerable traffic between those points, but no showing was made that the goods listed on these manifests were from New Orleans; nor was it shown that there was any substantial movement of business at any time from that point. No regular schedule of sailings is maintained from New Orleans, and although these water lines have been in operation for upward of five years they have not affected the rates

of the rail lines, but on the contrary the rates by water are based on and made with a definite relation to the all-rail rates. For many years prior to the establishment of this water route the present basis of rates was maintained by the rail lines, and the history of its establishment shows clearly that it was adopted at a time when such water competition as may have previously existed was no longer a force to be reckoned with, if in fact it had not entirely disappeared. The evidence also shows that the carriers have reduced and increased many of the commodity rates from New Orleans to Kansas City since the establishment of the general basis in 1900, and there is nothing to indicate that since that time the adjustment of these rates has not been entirely within the control of the rail lines. We hold, therefore, that while water competition may fix a limit beyond which the rail lines may not go in making rates to Kansas City, it does not necessitate the present rates to that point nor compel the maintenance of lower rates than to intermediate points.

It is admitted by petitioners that at present there is no active water competition from New Orleans to other Missouri River cities, nor has there been for many years. We also hold, therefore, that carriers are not justified because of water competition in continuing lower rates to other Missouri River cities than to intermediate stations.

This brings us to the consideration of the other causes which are alleged by carriers to have influenced rates from New Orleans to Missouri River points. Of these, commercial or market competition perhaps has been a factor of some importance, but the extent to which it may have affected rates is not shown of record. Carrier competition, however, has played an important part and is to-day the predominating influence in the situation.

The evidence shows that the basis of rates adopted following the above-mentioned conference in 1900 was largely the result of the action of rail lines operating through Memphis, Tenn., and Port Arthur, Tex. The line from Memphis to Kansas City, which is now owned by the Frisco, was then known as the Kansas City, Fort Scott & Memphis. The line from Port Arthur, which is now the Kansas City Southern, was known as the Kansas City, Pittsburg & Gulf. These two lines operated only between the points named and had no interest in other traffic. They obtained little business, except between their terminals, and endeavored to increase their tonnage by establishing such rates as they deemed necessary to accomplish this purpose. It is alleged that the present scale of rates is due in a large measure to their activities in that direction and that they dominate the situation to such an extent at present as to necessitate the continuance of the same rates by the applicants operating routes through the

territory west of the Kansas City Southern. The Illinois Central to St. Louis and the Wabash and other lines extending west from that point to Kansas City and the Missouri River, and also the Texas & Pacific, in connection with the St. Louis, Iron Mountain & Southern and Missouri Pacific through Ferriday, La., Little Rock and Diaz, Ark., and Carthage, Mo., are also said to have been potent factors in bringing about the present adjustment of rates to Kansas City.

There is no route from New Orleans to Kansas City and points in Kansas applying over the lines of a single carrier. All of them are formed by two or more lines; also there is no single line from New Orleans to any of the Missouri River cities, except to Omaha and Sioux City and certain points in those groups, which are reached by the direct line of the Illinois Central.

All of the routes which ask to continue lower rates to the Missouri River than to intermediate points are more or less circuitous, but many of them are less than 15 per cent longer than the direct route and some are shorter than lines operating through the territory east of the line of the Kansas City Southern which do not charge higher rates to intermediate points than to Missouri River cities. Exam ples of distances via these routes are shown in the following table:

	Miles from New Orleans to Kansas City.
Routes via which relief is sought:	
Louisiana Railway & Navigation Company to Shreveport, and thence via Missouri, Kansas & Texas	940
Texas & Pacific to Ferriday, and thence via St. Louis, Iron Mountain & Southern-Missouri Pacific via Coffeyville	975
Routes observing the fourth section:	
Texas & Pacific to Ferriday, and thence via St. Louis, Iron Mountain & Southern-Missouri Pacific, via Little Rock and Diaz	959
Illinois Central to Cairo, thence via Mobile & Ohio to St. Louis, and thence via the Wabash	998
Illinois Central to St. Louis, and thence via the Wabash	995

Applicants, however, do not rest their case entirely on the ground that their lines are markedly circuitous, but assert that the territory through which they operate is normally a higher rated territory than that east of the Kansas City Southern and that lines passing through this territory, while not markedly circuitous, are, because of their devious routes through higher rated territory, entitled to relief on the circuitous route principle. With this contention we can not agree. We have frequently held that where carrier competition is the only influence which has operated to reduce rates to a competitive point the direct lines and those less than 15 per cent longer than the direct lines must observe the fourth section and not charge higher rates to intermediate points. *Fourth Section Applica-*

tions 1870, 2045, 2471, and 4218, 24 I. C. C., 192; *Fourth Section Applications 542 et seq.*, 25 I. C. C., 50; *Fourth Section Violations in the Southeast, supra.* In the case last cited we said, page 304:

> The fundamental reason, however, for granting relief to any line at a given point is the meeting at that point of the competition of other carriers against which competition petitioner is at a disadvantage.

Those carriers whose routes from New Orleans to the Missouri River cities are reasonably direct are not shown to be at any substantial disadvantage because of other conditions in meeting the competition of shorter lines. We hold, therefore, that they are not justified in continuing higher rates to intermediate points than to Missouri River cities, and fourth section relief will be denied.

Carriers whose routes to the Missouri River cities are 15 per cent or more longer than the direct line should be allowed to meet the rates of the shorter routes and to continue higher rates to intermediate points in Kansas, provided the rates to these points are not unreasonable relatively or *per se.* The principal routes of this character are those operating in connection with the Santa Fe and Rock Island through Arkansas City and Caldwell, Kans. The class rates to representative intermediate points on these lines are as follows:

To—	Miles.	1	2	3	4	5	A	B	C	D	E	Average.
Arkansas City, Kans	873	145	123	104	96	75	72	60	47	38	34	78.2
Caldwell, Kans	866	145	124	104	96	75	76	63	49	40	35	80.7
Wichita, Kans	916	130.5	121	104	93	74	72	59	47	38	34	78.15
Topeka, Kans	1,071	137	109	94	68	45	54	47	35	31	28.5	64.15

These rates are compared by the petitioners with rates prescribed by this Commission for like distances between points in the same general territory as follows:

	Distance.	1	2	3	4	5	A	B	C	D	E	Average.
St. Louis to Texas common points [1]	[2] 800	147	126	104	96	75	79	70	58	46	38	83.9
Galveston to Wichita, Kans. [3]	700	122	112	94	86	65	71	63	52	41	38	75.4
Galveston to Oklahoma City, Okla. [3]	550	112	96	80	73	57	60	54	44	38	30	64.1
Iowa points to Kansas points [4]	700	137	115	91	69	55	61	48	41	34	27	67.8
	800	152	128	101	76	61	68	53	46	38	38	75.3

[1] *Railroad Commission of Texas v. A., T. & S. F. Ry. Co.*, 20 I. C. C., 463.
[2] Average.
[3] *Southwestern Shippers' Traffic Asso. v. A., T. & S. F. Ry. Co.*, 20 I. C. C., 570.
[4] *Iowa State Board of Railroad Commissioners v. A. E. R. R.*, 28 I. C. C., 193.

The rates which petitioners desire to continue to intermediate points in Kansas on these circuitous lines compare favorably with rates in this table. However, in comparison with rates to Kansas City and other Missouri River cities they appear to be unduly high. The distances to Arkansas City, the first point in Kansas on the

Santa Fe, and Caldwell, the first point in Kansas on the Rock Island, are approximately the same as the distance from New Orleans to Kansas City by the direct line. To these stations we hold that the rates from New Orleans should not exceed the rates contemporaneously in effect to Kansas City.

To points north and east thereof rates should not exceed rates made the following differentials higher than the rates to Arkansas City and Caldwell for each additional 100 miles or fraction thereof:

Classes	1	2	3	4	5	A	B	C	D	E
Differentials	5	4	4	3	2	2	2	2	2	1

No justification was offered for the maintenance of domestic rates on traffic from Galveston to Missouri River cities lower than to intermediate points, and fourth section relief in respect to these rates will be denied.

COMMODITY RATES.

On the principal commodities which move from New Orleans to Missouri River cities and Kansas territory commodity rates are published to intermediate points as well as to Missouri River cities. Where such rates are published the disparities between the rates to the intermediate points and the more distant points are not as great as the disparities in the class rates shown above. There are a number of articles, however, on which commodity rates applicable to the Missouri River cities are not published to intermediate points, and the disparities between the class rates applicable on these commodities to the intermediate points and the commodity rates applicable to the more distant points are greater than those existing in the class rates. We are of opinion that the rate on any commodity to intermediate points involved herein should not exceed the rate on the same commodity to the more distant point by more than the difference between the rates on the class to which the commodity belongs. For example, the rate to an intermediate point on a commodity classified as fifth class should not exceed the rate on the same commodity to the more distant point by a greater amount than the fifth-class rate to the intermediate point exceeds the fifth-class rate to the more distant point, and authority to continue higher rates in those instances will be denied.

The rates on some of these commodities are not published to intermediate points because they do not ordinarily move to such points, and there is no necessity for the publication of commodity rates. In those instances covered by this report where carriers are authorized to publish and charge lower rates to more distant than to intermediate points the publication of rates on commodities to intermediate points to which such commodities do not ordinarily move will

not be required if the item containing the commodity rate to the more distant point makes proper reference to a note reading as follows:

The rate named in this item is not applicable to all intermediate points. This departure from the requirements of the fourth section is authorized by I. C. C.'s Fourth Section Order No. 6704. Upon reasonable application therefor a rate will be established to any intermediate point, upon one day's notice to the Commission and to the public, which will not exceed the rate to the next more distant point to which a rate is named by more than the class rate on the class to which this commodity belongs exceeds the rate on the same class to the more distant point.

IMPORT RATES.

The rates on import traffic from the Gulf ports to the Missouri River cities are divided into two classes, according to the origin of the traffic. The first class of rates applies on traffic imported from Europe, Asia, and Africa. The second class applies on traffic originating in other foreign countries. The rates made on each class of traffic apply generally from all Gulf ports west of and including Pensacola, Fla.

Generally the lowest domestic rate from any Gulf port applies as the maximum rate from the other ports. In explanation of the two classes of rates the carriers assert that the first class was necessitated by the competition created by routes operating from the Atlantic seaboard. It is stated that for many years it has been the policy of the lines leading from New Orleans to central freight association territory to adjust their rates on import traffic from that port so as to place it as nearly as possible on an equality with the Atlantic ports with respect to traffic destined to the same territory. This policy is said to have been inaugurated by the Illinois Central and later adopted by other lines. At first the Gulf lines attempted to accomplish this by making import rates on traffic from New Orleans to Ohio River crossings, Chicago, St. Louis, and other important cities in the same territory as low as those in effect from the Atlantic ports. It is stated that this did not have the desired effect and the New Orleans lines soon found it necessary, in order to attract the movement of import business through New Orleans, to make lower import rates from that point than the rates in effect on like traffic from the Atlantic seaboard.

The eastern lines operating from the Atlantic ports resisted these attempts of the southern lines to divert business from the Atlantic to the Gulf ports and met the reduction of the Gulf lines, with the result that the rivalry between the two groups of carriers soon developed into a rate war, with mutually detrimental results. This condition, it is stated, continued until the year 1908, when, after

numerous conferences between the Gulf lines and the eastern lines, the Gulf lines adopted as the basis for the construction of rates to apply on import traffic originating in Europe, Asia, and Africa from all Gulf ports west of and including Pensacola, Fla., to the territory of destination hereinbefore described, the following scale of differentials under the standard all-rail class rates from New York governed by official classification:

Classes	1	2	3	4	5	6
Differentials	18	18	12	8	6	6

Import rates on commodities from the Gulf ports to the same territory of destination were also constructed on the basis of relative differentials under the rates from New York, observing the lowest domestic rates from any Gulf port as the maximum rates in all instances.

The rates from New York and other Atlantic ports to the territory described grade up from the east toward the south and west. Traffic from the Gulf ports moves into this territory from the opposite direction. The rates from the Gulf ports made differentials under the rates from New York of necessity therefore grade downward from the south and west toward the north and east. As a result there are many cases where the rates from the Gulf ports are higher for shorter than for longer distances.

In explanation of the establishment of rates on the basis described it was pointed out by the petitioners that the Atlantic ports possess many advantages over the Gulf ports in respect to import traffic originating in Europe, Asia, and Africa, chiefly because the distance by water to the Atlantic ports is much shorter than to the Gulf ports. Rates by water are, therefore, lower and the cost of marine insurance less; also the service is more frequent, as the Atlantic ports are connected with the ports of the old world by many old and well-established lines which maintain regular schedules with some of the largest and fastest vessels afloat. The following table shows the distances by water from representative European ports to New York and New Orleans:

	Miles.
Liverpool to—	
New York	3,056
New Orleans	4,686
London to—	
New York	3,261
New Orleans	4,914
Gibraltar to—	
New York	3,205
New Orleans	4,614

The Gulf lines maintained that in view of these advantages of the Atlantic ports over the Gulf ports, rates from the latter ports to the

competitive territory hereinbefore described should be lower than from the Atlantic ports. The force of this contention seems to have been recognized by the eastern lines, as rates from the respective groups of ports have been maintained on the differential basis shown above since its adoption by the Gulf lines. It is stated that the same general basis has been observed in the construction of rates from the Gulf ports to Missouri River points and the territory west thereof, including points in Kansas, to apply on traffic imported from Europe, Asia, Africa, Australia, New Zealand, and the Philippine Islands. This, however, does not seem to have affected the class rates on import traffic from the Gulf ports to the territory involved in this proceeding. As shown above, the domestic rates from any Gulf port are observed as the maximum rates on import traffic from all Gulf ports west of and including Pensacola.

The record shows that the rates applicable on import traffic from New Orleans to the Missouri River have been in effect since long prior to the adoption by the Gulf lines of the basis described above, and can not therefore be said to have been influenced by the rates from New York or other Atlantic ports, nor is it shown in this record that commodity rates have been materially affected by this condition. There is therefore no reason why any greater measure of relief should be granted from New Orleans in respect to such rates than is granted in respect to domestic rates, and further relief will be denied.

The second class of import rates applies on traffic originating in countries other than those described above and are said to have been made on a different basis. From these countries, which are principally the West Indies and Central and South America, the distances to the Gulf ports are generally not greater than the distances to the Atlantic ports. The ocean rates are about the same, and rates from the Gulf ports have not been made with a definite relation to rates from Atlantic ports, but are based as a rule on the domestic rates. The lowest domestic rate from any port is generally applied as the maximum from other ports. The lowest rates from any Gulf port to the Missouri River and points in Kansas intermediate thereto are the local rates from New Orleans, which are shown above. The departures from the fourth section existing in these import rates from New Orleans, therefore, are the same as those existing in the domestic rates which have been considered above, and fourth section relief will be granted as to these rates to the same extent that it has been granted as to the domestic rates.

The situation with respect to the rates from Galveston to the Missouri River cities is somewhat different. The domestic rates from New Orleans have been established as import rates from Galveston. These rates are considerably lower than the local rates from Gal-

veston, and are also lower than the local rates from New Orleans or Galveston to points intermediate to the Missouri River cities. Their application from Galveston, therefore, results in lower rates on import traffic from that point to Missouri River cities than are contemporaneously applicable to intermediate points. For example, the local rates from New Orleans to Kansas City are as follows:

Class	1	2	3	4	5	A	B	C	D	E
Rate	110	85	65	58	38	42	37	27	24	23

The local rates from Galveston to Kansas City and many intermediate points in Kansas are:

Class	1	2	3	4	5	A	B	C	D	E
Rate	147	125	104	96	75	79	70	58	46	39

The publication of the same rates from Galveston as from New Orleans on import traffic is in pursuance of a policy of carriers serving the Gulf ports to keep them on an equality as to freight rates. If this were done consistently, the rates on import traffic from Galveston to points intermediate to the Missouri River cities would not exceed rates to the latter points by greater amounts than the domestic rates from New Orleans to the said points exceed the domestic rates from New Orleans to the Missouri River cities. It does not appear, however, that this rule has been closely followed in establishing rates to apply on import traffic from Galveston to intermediate points, as the rates from Galveston in many instances are higher than the rates from New Orleans to intermediate points.

In justification of this adjustment of rates from Galveston the carriers contend that it is necessary in order to keep that point on a parity with New Orleans as a port of entry for foreign commerce. It is apparent that the carriers leading from Galveston and other Gulf ports can not expect business to be imported through ports at which they have their deep-water terminals unless they make the same rates from the said ports to points in the interior as are applicable from other ports, because, as a general rule, the ocean rates to all of the ports are the same.

The situation presented therefore is one of competition between carriers from New Orleans, on the one hand, and Galveston on the other, and in principle is closely analogous to situations where the competition is between carriers serving one and the same port for traffic destined to a competitive point of destination. Carriers desiring to depart from the fourth section in situations of this kind must show that they are at a disadvantage in meeting the competition of rival lines. The direct lines from New Orleans to the Missouri River and many of the indirect lines observe the fourth section.

We come to inquire, therefore, what disadvantage are the lines from Galveston subject to in meeting the competition created by lines

from New Orleans. The short-line distances from the two ports, using Kansas City as a representative point of destination, are as follows:

	Miles.
New Orleans to Kansas City via Texas & Pacific to Shreveport and thence via Kansas City Southern	868
Galveston to Kansas City via Galveston, Houston & Henderson to Houston, Tex., thence via Trinity & Brazos Valley Railway to Dallas, Tex., and thence via Missouri, Kansas & Texas	806

The direct lines from Galveston, therefore, are at no disadvantage as compared with the lines from New Orleans in the matter of distance, nor does it appear from the record in this case that they are at any disadvantage because of other conditions. Authority to continue lower rates on import traffic from Galveston to Kansas City than to intermediate points by direct lines therefore will be denied. Carriers whose lines are 15 per cent or more longer than the direct lines from Galveston will be authorized to meet the rates of the short line and to continue higher rates to intermediate points upon condition that the rates to the said intermediate points do not exceed rates on like traffic contemporaneously in effect from New Orleans and the said rates do not exceed the lowest combination. An appropriate order will be entered.

No. 6119.[1]

PUBLIC UTILITIES COMMISSION FOR THE STATE OF KANSAS

v.

ALABAMA & VICKSBURG RAILWAY COMPANY ET AL.

Submitted November 18, 1915. Decided May 17, 1917.

In view of the findings and order in *Rates from New Orleans and Galveston to Missouri River Cities, infra*, page 727, announced concurrently herewith, and of the many changes in rates made since these complaints were filed, and for other reasons stated in the report, the record herein affords no appropriate basis for findings and an order. The complaints are therefore dismissed without prejudice.

Joseph L. Bristow, *A. E. Helm*, and *H. O. Caster* for Public Utilities Commission for the state of Kansas.

H. D. Driscoll for Topeka Traffic Association.

Martin E. Casto for Wichita Business Association.

E. H. Hogueland for Hutchinson Traffic Bureau and Coffeyville and independent wholesalers.

W. V. Hardie for Oklahoma Traffic Association.

W. F. Dickinson, *Henry G. Herbel*, *Fred G. Wright*, *T. J. Norton*, *A. A. Hurd*, *F. H. Wood*, *H. A. Scandrett*, *A. P. Humburg*, *C. S. Burg*, *Thomas Bond*, *J. W. Allen*, and *G. W. Hamilton* for defendants.

REPORT OF THE COMMISSION.

HARLAN, *Commissioner:*

These complaints were filed by the Public Utilities Commission for the state of Kansas, the Wichita Business Association, the Hutchinson Traffic Bureau, and the Topeka Traffic Association, in order to bring to the Commission's attention certain class and commodity rates to and from certain jobbing cities in that state, particularly Anthony, Arkansas City, Coffeyville, Emporia, Hutchinson, Independence, Lawrence, Salina, Topeka, Wichita, and Winfield. The principal allegation of each complaint is that from New Orleans to points in Kansas the rates in effect when the several complaints were filed, on denatured alcohol, canned goods, coffee, rice, sugar, and on several other commodities, were in and of themselves unjust

[1] The proceeding also embraces complaints in No. 6119 (Sub-No. 1), Wichita Business Association *v.* Same; No. 6119 (Sub-No. 2), Hutchinson Traffic Bureau *v.* Same; and No. 6228, Topeka Traffic Association *v.* Same.

and unreasonable, and that they were also unjust, unreasonable, discriminatory, and prejudicial as compared with the rates on the same commodities to Kansas City and Omaha, in violation of sections 1, 2, and 3 of the act. It is also alleged that section 4 of the act was violated in that higher rates were charged to intermediate points in Kansas than were charged to Kansas City and Omaha and certain other more distant points. In the complaint of the Kansas commission the carload rates on bananas, both from Galveston and from New Orleans, are also attacked.

As heretofore stated, each of the complaints alleged unreasonableness, discrimination, etc., with respect to certain commodity rates from New Orleans to Kansas points as compared with the rates to the Missouri River cities; in addition Wichita alleged an unreasonable and preferential rate adjustment in favor of Hutchinson and Salina; Hutchinson complained of the class rates from both New Orleans and Galveston and further alleged that its rates were unreasonable and discriminatory and unduly preferred destination points in the states of Kansas, Missouri, Iowa, Minnesota, Nebraska, and South Dakota; Topeka's complaint included the class rates between New Orleans and Topeka and Memphis and Topeka as well as the rates on butter and eggs from Topeka to New Orleans and Memphis. The Oklahoma Traffic Association intervened to secure the maintenance of a reasonable relationship between the rates to Oklahoma City and Kansas points.

The several complaints were heard on one record together with certain applications involving departures from the fourth section at some or all the points in Kansas heretofore named as well as at other points in that state, in that the rates on shipments from New Orleans and Galveston to Kansas City, Omaha, Sioux City, and other Missouri River cities, were lower than to the intermediate points.

The complaints were filed during the fall of 1913; the first hearing was had on November 10, 1914, and the cases were finally submitted to the Commission under date of November 18, 1915. During the period between the filing of the complaints and the first hearing, changes were made in certain of the rates complained of and the complaints as to those rates were withdrawn. During the pendency of the proceedings many increases in and adjustments of rates throughout the country have been made as a result of our reports in *The Five Per Cent Case*, 31 I. C. C., 351, and 32 I. C. C., 325, and in the *1915 Western Rate Advance Case*, 35 I. C. C., 497; and practically all the carriers involved here are again before us requesting a general increase in their freight rates.

While the reasonableness of the rates to the several points is questioned on the complaints, both the testimony offered and the

argument, upon brief and orally, relates almost exclusively to the comparison of the rates to Kansas points with the rates to Kansas City, Omaha, and other Missouri River cities and to Lincoln, and more particularly to the matters embraced in the fourth section applications. These applications are disposed of in *Rates from New Orleans and Galveston to Missouri River Cities*, *infra*, page 727, issued concurrently herewith, and when the order therein shall have been complied with many of the principal causes of complaint will be removed. In view of the existing rate conditions and of the changes in rates already made as hereinbefore described, it does not seem possible at this time and upon this record to make any findings or enter an order respecting the question of reasonableness presented by the complaints. The complaints will therefore be dismissed without prejudice, and it will be so ordered.

INVESTIGATION AND SUSPENSION DOCKET No. 984.

LAKE AND RAIL RATE CANCELLATIONS (No. 3).

Submitted January 4, 1917. Decided May 21, 1917.

A carrier operating exclusively in Canada can not be required to maintain joint arrangements with domestic carriers for the transportation of traffic from and to points in the United States. Order of suspension directed against a schedule filed by the Grand Trunk Railway system canceling joint rates with the Northwestern Steamship Company and eastern trunk lines on traffic from Lake Superior ports vacated.

W. K. Williams for Grand Trunk Railway Company of Canada.
W. L. Jenks for Northwestern Steamship Company.
Ernest S. Ballard for trunk lines.
Frederic L. Ballard for Pennsylvania Railroad Company.

REPORT OF THE COMMISSION.

HALL, *Chairman:*

By supplement No. 21 to its tariff I. C. C. No. 2110, filed to become effective December 20, 1916, the Grand Trunk Railway system proposes to cancel the joint lake-and-rail class and commodity rates applying in connection with the Northwestern Steamship Company on traffic from Duluth, Minn., and other ports on Lake Superior to points in trunk line territory served by rail carriers operating east-

ward from Buffalo, N. Y. By order of the Commission the schedule was suspended until April 19, 1917, and later until October 10, 1917, pending investigation. Cancellation of the joint rates would leave in effect higher combination rates, thus materially increasing the through charges on traffic moving over this route from Lake Superior ports and many points west thereof. Tariffs published by lines west of Duluth containing joint rates on commodities from St. Paul and Minneapolis, Minn., and points taking the same rates to eastern destinations via this route have not been canceled. As is customary, these rates were suspended by the carriers at the close of navigation in 1916 and have not yet been restored.

The Northwestern Steamship Company operates a line of boats between Lake Superior ports and Port Huron, Mich., or Point Edward, Ontario. At Point Edward connection is made with the Grand Trunk Railway Company of Canada, hereinafter called the Grand Trunk, which transports shipments delivered to it by the boat line to the Niagara frontier, whence they are carried to destination by various lines, including the Delaware, Lackawanna & Western Railroad, Erie Railroad, Lehigh Valley Railroad, New York Central Railroad, and Pennsylvania Railroad. Joint arrangements have been maintained for many years on traffic from Lake Superior ports and from St. Paul and Minneapolis to eastern points by way of the Northwestern Steamship Company, or its predecessors, and its rail connections. In the fall of 1915 a controversy arose between the different parties to the through routes regarding divisions of the joint rates, and in September and October, 1915, tariffs were filed by the Grand Trunk and the lines west of Duluth proposing to cancel those rates. The Commercial Club of Duluth and the Northwestern Steamship Company, then called the Port Huron & Duluth Steamship Company, protested against the cancellations and the tariffs were suspended. After hearing and investigation we reached the conclusion in *Lake and Rail Rate Cancellations*, 38 I. C. C., 201, that—

> * * * the public interests will be best served by a continuance of through routes and joint rates, and we find nothing in the evidence to justify the cancellations proposed. The mere fact of disagreement between the carriers as to divisions does not prove that the joint rates are unreasonable, or that the routes over which they are applied should be abandoned. We hold that the proposed cancellations have not been justified and that the suspended tariffs should be canceled and that the through routes and joint rates applicable thereto should be maintained.

Our order in that proceeding required the respondents to cancel the suspended schedules on or before May 1, 1916, and to maintain the joint rates and through routes for a period of two years. The order, therefore, has not expired. Subsequently, the Port Huron &

Duluth Steamship Company filed a petition asking the Commission to prescribe divisions of the joint rates, whereupon the case was reopened for that purpose, hearing has been had, and the question of divisions is now awaiting determination.

In March, 1915, a proceeding was instituted by the boat line to effect the establishment of a through route via its boats and the Pennsylvania Railroad. This was neither advocated nor opposed by the latter, and such a route was established by our order in *Port Huron & Duluth S. S. Co.* v. *Pennsylvania R. R. Co.*, 35 I. C. C., 475. Maintenance of the route was required for a period of two years from the date of its establishment, October 1, 1915. By our supplemental report in that proceeding, 40 I. C. C., 385, divisions of the joint rates were prescribed. The Grand Trunk, considering the divisions thereby allotted to it to be inequitable, filed a petition for rehearing, which was granted, and the record in that case is also now before us.

The position taken by the Grand Trunk in the present proceeding apparently grows out of our decision in the matter of divisions with the Pennsylvania Railroad. The Grand Trunk has assumed that the divisions to be prescribed in *Lake and Rail Rate Cancellations*, *supra*, and upon the rehearing in *Port Huron & Duluth S. S. Co.* v. *Pennsylvania R. R. Co.*, *supra*, will be unsatisfactory to it and has therefore determined to withdraw from the traffic, relying upon the alleged lack of authority in this Commission to require it to participate in the transportation. This action was not taken because of any dissatisfaction with the rates, but, as stated, because it anticipates unsatisfactory divisions. It offers to remain a party to the joint rates provided it receives the divisions heretofore accorded to it on traffic interchanged with the Delaware, Lackawanna & Western, Erie, Lehigh Valley, and New York Central railroads. Another explanation given for the cancellation of the rates was that the Grand Trunk, which published the tariff, desired to be relieved from acting as agent in this respect for the Northwestern Steamship Company, the initial carrier. As to whether the boat line or the rail line should publish the tariff is a matter for the carriers themselves to determine and is of no concern to the Commission. See *Lake and Rail Rate Cancellations*, 42 I. C. C., 513, 522. We will therefore consider only the jurisdictional point raised.

The service performed by the Grand Trunk consists in the movement of the traffic through the Dominion of Canada from Point Edward to the Niagara frontier. It is contended that this movement, being beyond the confines of the United States, is not subject to our jurisdiction, and that therefore we may not require the Grand Trunk to establish or maintain joint rates for the transportation of

the traffic. This precise question has not heretofore been determined, but was discussed in *Rates on High Explosives to G. T. Ry. System Stations*, 33 I. C. C., 567. That case dealt with the proposed cancellation by the Grand Trunk of joint rates on high explosives from eastern points of origin to destinations in Michigan. The route over which the rates applied lay partly in Canada. It was contended there that this Commission had no authority to require that carrier without its consent either to establish or to continue to maintain joint arrangements with our domestic carriers for the through movement of traffic. We said in that case, page 570:

> There may be that limitation upon our powers respecting the rates and practices of carriers moving traffic between domestic points over intermediate Canadian rails. But obviously no definite ruling upon questions involving a possible conflict of authority as between the rate-regulating bodies of this country and of Canada should be announced in such a case as this and upon such a record and without the most ample consideration of the matter in all its phases. We shall therefore express no final conclusions at this time respecting the question of our jurisdiction and the application of our act under the terms of section 1 to the rates and practices of the carriers moving traffic between domestic points over intermediate Canadian rails.

It will probably not be seriously controverted that the terms of section 1 apply to a Canadian line which has voluntarily joined with domestic lines in establishing through routes and joint rates between points in the United States over Canadian rails. When engaged in such transportation the Canadian line subjects itself to our jurisdiction over the joint rates in which it participates, and if it desires to continue to engage in the through transportation it must abide by our conclusions as to the reasonableness of such rates and the divisions thereof. But the authority of this Commission could not be invoked to create a through route through Canada and to prescribe joint rates for application thereto if the Canadian line should refuse to enter into such an arrangement, and, following the principle announced in *The Ogden Gateway Case*, 35 I. C. C., 131, if we could not originally establish the route we may not require its maintenance for the future. Section 1 of the act confers upon us not only jurisdiction over traffic from a point in this country through Canada to a point in this country but also from a point in this country to a point in Canada. But when petitioned by an American carrier to establish through routes and joint rates for the transportation of traffic to a Canadian destination we held that our jurisdiction does not extend to railroad or steamship lines located, owned, and operated entirely in an adjacent foreign country. *Humboldt S. S. Co. v. White Pass & Yukon Route*, 25 I. C. C., 136.

In *Rates on Soda Ash*, 28 I. C. C., 613, involving increased rates from Wyandotte, Mich., to destinations in Canada, we said, at pages 614 and 615:

We are given jurisdiction over traffic from a point in the United States to a point in Canada, and we may undoubtedly act upon the American lines over which we have jurisdiction to a certain extent in case of such rates. It is doubtful if we could require our American lines to establish and maintain for the future a rate to Canadian points. We can require them to maintain rates which are now in effect until some affirmative action is taken by some Canadian line, over which we have no control, which prevents the continuance of those rates, or until the Canadian commission has acted in the premises. * * * These American lines should be required to secure to these American manufacturers a fair rate until * * * by the action of some carrier to which our authority does not extend it has become impossible to comply with our requirement.

An order was entered in that case, but permission was given to apply to the Commission for a modification thereof if a Canadian line not subject to our jurisdiction refused to participate in the rates.

Among other cases in which foreign carriers were considered, and in which we have held that our jurisdiction attaches only to the transportation within the confines of the United States, are: *International Paper Co.* v. *D. & H. Co.*, 33 I. C. C., 270; *Black Horse Tobacco Co.* v. *I. C. R. R. Co.*, 17 I. C. C., 588; and *Carey Mfg. Co.* v. *G. T. W. Ry. Co.*, 36 I. C. C., 203.

In the proceeding now before us the Grand Trunk Railway Company of Canada, by canceling the joint rates, has taken affirmative action toward terminating the present arrangements for the through transportation of traffic from Lake Superior ports to points in the United States, tendered to it by the Northwestern Steamship Company. We are of opinion and find that its action in this respect is not subject to our control and therefore the order of suspension will be vacated.

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No. 8247.

CADILLAC LUMBER EXCHANGE

v.

ANN ARBOR RAILROAD COMPANY ET AL.

Submitted March 17, 1916. Decided May 12, 1917.

Rates on carload shipments of hardwood flooring from Cadillac, Mich., to Salt Lake City, Utah, found to have been unreasonable to the extent that the components thereof applicable from Milwaukee, Wis., to Salt Lake City exceeded 69 cents per 100 pounds. Reparation awarded.

Ernest L. Ewing for complainant.

H. S. Bradley for Ann Arbor Railroad Company.

L. T. Wilcox for Union Pacific Railroad Company; Oregon Short Line Railroad Company; and Denver & Rio Grande Railroad Company.

James H. Campbell for Grand Rapids & Indiana Railway Company.

R. P. Paterson for Pere Marquette Railroad Company and its receivers.

J. H. Henderson and *R. D. Waller* for intervener.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a voluntary association of lumber dealers, with its principal office at Cadillac, Mich. By complaint, filed August 18, 1915, it alleges that defendants' combination rates based on Chicago, Ill., Mackinaw City, Mich., Milwaukee, Wis., and related basing points, for the transportation of lumber and flooring, in carloads, from Cadillac to Salt Lake City, Utah, are unreasonable, unjustly discriminatory, and unduly prejudicial. Reparation is asked on behalf of certain of complainant's members named in the complaint on shipments which moved during the statutory period. The Farley & Loetscher Manufacturing Company, of Dubuque, Iowa, intervened and complains particularly of the rates for the transportation of door and window casings, baseboards, blocks, and plain carpenters' moldings, in carloads, from Dubuque to Salt Lake City. Commodity rates to Salt Lake City of 57 cents per 100 pounds from Chicago and related points and 55 cents from Dubuque and certain other

Mississippi River points applied on various lumber articles, but did not include the articles in which intervener is interested. The only contention made by intervener is that its articles should be accorded the above-named rates. Defendants agreed to establish these rates and since the hearing have done so.

The only evidence offered concerning the actual movement of lumber from and to the points involved relates to hardwood flooring. Twenty shipments thereof were made from Cadillac by Cobbs & Mitchell, one of complainant's members. Nine moved over the Grand Rapids & Indiana Railway to Mackinaw City, and thence to destination by way of Duluth, South Shore & Atlantic, Minneapolis, St. Paul & Sault Ste. Marie, and Chicago & North Western railways, and Union Pacific and Oregon Short Line railroads, hereinafter called the Mackinaw City route; 11 moved over the Grand Rapids & Indiana Railway and either Pere Marquette Railroad car ferry or Grand Trunk Railway car ferry to Milwaukee, and thence to destination by way of the Chicago, Milwaukee & St. Paul Railway, Union Pacific, and Oregon Short Line, hereinafter called the Milwaukee route.

At the hearing, without objection by the defendants there represented, evidence was introduced concerning, and reparation was asked on, 13 carloads of hardwood flooring shipped by Mitchell Brothers Company, one of complainant's members, from Jennings, Mich., to Salt Lake City, during the period from July 28, 1913, to April 28, 1915, inclusive. These shipments moved from a point not covered by the complaint, and service of notice has not been had upon or waived by the participating defendants not represented at the hearing. That matter may be dealt with, therefore, only in a separate proceeding, and the shipments in question will not be further considered in this case.

The components from Cadillac to Mackinaw City charged and legally applicable on the shipments which moved during the period from July 3, 1913, to August 4, 1913, inclusive, were 6 cents, and during the period from August 5, 1913, to April 10, 1914, inclusive, embracing the entire period of movement through Mackinaw City, 8 cents. Apparently the corresponding components charged and legally applicable on the shipments by way of the Milwaukee route during the period from June 19, 1914, to October 25, 1914, inclusive, were 8 cents, and, on those moving subsequently, 8.4 cents.

Rates of 69 cents from Mackinaw City, and of 69 and 70 cents from Milwaukee, were collected for the movement thence to Salt Lake City, and of these only the 70-cent component is assailed. However, while a rate of 69 cents, applicable west of Mackinaw

City by way of the Mackinaw City route, was published in R. H. Countiss's I. C. C. Nos. 949 and 971, another rate of 78.5 cents was published in W. A. Poteet's I. C. C. No. 250, and defendants contend that the latter rate should have been collected. The shipments moved over the Chicago & North Western and the 78.5-cent rate was not applicable in connection with that line. The rate therefore legally applicable over the route of movement was 69 cents.

A different situation existed as to the rates west of Milwaukee by way of the Milwaukee route. A rate of 70 cents was established in W. A. Poteet's I. C. C. No. 66, effective January 1, 1900, and remained in effect throughout the period of movement. A rate of 69 cents was published from Milwaukee to Salt Lake City in R. H. Countiss's I. C. C. No. 949, effective July 22, 1912. This tariff did not cancel the rates in Poteet's tariff, nor did it make any reference thereto. The rate legally applicable over the Milwaukee route was 70 cents, and the shipments on which the 69-cent component was applied from Milwaukee to Salt Lake City were therefore undercharged.

Complainant contends, and defendants admit, that the component west of Milwaukee was unreasonable to the extent that it exceeded 69 cents. Defendants expressed willingness to make reparation on that basis, and agreed to establish a 69-cent rate to Salt Lake City locally from Milwaukee and related points and proportionally from Mackinaw City. Since the hearing defendants have established those rates, which are satisfactory to complainant.

When the shipments moved rates of 70 cents applied on lumber and articles taking the same rates to Salt Lake City from Chicago and certain related basing points, other than Mackinaw City, in connection with the Chicago, Milwaukee & St. Paul Railway, by virtue of Poteet's tariffs named. No evidence was introduced concerning those rates. Since the hearing, however, defendants have established rates of 69 cents over all the routes named in their tariffs.

We find that the rates legally applicable on the shipments of hardwood flooring from Cadillac to Salt Lake City were unreasonable to the extent that the components thereof from Milwaukee to Salt Lake City exceeded 69 cents per 100 pounds. We further find that Cobbs & Mitchell, a corporation, made the shipments as described and paid and bore the charges thereon at the rates herein found to have been and to be unreasonable; that it has been damaged to the extent that the charges paid exceeded the charges that would have accrued at the rates herein found reasonable; and that it is entitled to reparation, with interest, on the shipments not barred by the statute of limitations. The exact amount of reparation due can not be determined on

this record, and Cobbs & Mitchell should prepare a statement showing the details of the shipments in accordance with rule V of the Rules of Practice, which statement should be submitted to the defendants for verification. Upon receipt of a statement so prepared and verified, we will consider the entry of an order awarding reparation. The collection of the outstanding undercharges may be waived.

No. 8715.

P. HEALEY

v.

CHESAPEAKE & OHIO RAILWAY COMPANY ET AL.

Submitted August 1, 1916. Decided May 12, 1917.

Carload shipment of coke from Sewell, W. Va., to Evansville, Ind., found not to have been misrouted and complaint dismissed.

P. Healey for complainant.

A. P. Humburg for Illinois Central Railroad Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is engaged in the foundry business at Evansville, Ind. By complaint, filed March 8, 1916, he alleges that due to misrouting he was subjected to the payment of unreasonable charges for the transportation of a carload of coke shipped in December, 1914, from Sewell, W. Va., to Evansville. Reparation is asked.

The shipment was delivered to the Chesapeake & Ohio Railway at Sewell December 24, 1914, with a shipping card containing routing instructions "Via I. C.," but no rate. The shipment moved about January 1, 1915: Chesapeake & Ohio to Louisville, Ky., and Illinois Central Railroad beyond. No joint rate applied over the route of movement, and charges were collected at the legally applicable combination rate of \$3.10 per net ton, composed of \$1.50 to Louisville and \$1.60 beyond. A joint rate of \$2.25 was contemporaneously in effect from and to the points involved by way of the Chesapeake & Ohio to Louisville and the Southern or Louisville, Henderson & St. Louis railways beyond.

Complainant asserts that at the time of shipment the initial carrier's agent advised that a rate of \$2.25 applied over the route of

movement, and adds that this rate was inserted in the original bill of lading. In support of this latter contention it offered in evidence what purported to be the original bill of lading, in which the route over which the shipment moved and a rate of \$2.25 appear. Apparently no bill of lading was issued prior to or at the time the shipment was made, the one in evidence, dated January 9, 1915, having been issued by the initial carrier, upon request, after the shipment moved. No one with actual knowledge of the essential facts appeared at the hearing.

The Chesapeake & Ohio states in a letter offered in evidence that its agent has no record of the rate being shown in the bill of lading, and that he denies the quotation of a rate of \$2.25 over the route of movement. However, this latter fact is immaterial, as shippers are chargeable with notice of the legal tariff rates. *A. J. Poor Grain Co.* v. *C., B. & Q. Ry. Co.*, 12 I. C. C., 418.

We find that the shipment was not misrouted, and an order dismissing the complaint will be entered.

No. 6772.
CHARLES T. PERRY & COMPANY
v.
ARIZONA EASTERN RAILROAD COMPANY ET AL.

Submitted August 4, 1916. Decided May 12, 1917.

On rehearing rates on mining candles in carloads from Helena, Mont., to points in Arizona and New Mexico not found to have been intrinsically unreasonable. Complaint dismissed.

O. W. Tong for complainant.

Robert Dunlap, *T. J. Norton*, and *F. E. Andrews* for defendants.

L. C. Wilson for Arizona & New Mexico Railway Company, El Paso & Southwestern Company, El Paso & Southwestern Railroad Company, and others.

D. F. Lyons for Northern Pacific Railway Company.

L. T. Wilcox for Oregon Short Line Railroad Company.

S. H. E. Freund for Great Northern Railway Company.

Report of the Commission on Rehearing.

By the Commission:

In our original decision in this case, unreported, we found that the rates on carload shipments of mining candles from Helena, Mont., to various points in southern Arizona and New Mexico were not shown to be relatively unreasonable or unjustly discriminatory, and the complaint was dismissed. Upon petition for rehearing and for leave to file an amended complaint, the complainant was permitted to file an amended complaint alleging that the rates charged were intrinsically unreasonable, and the case was reopened for further hearing. Rates are stated in cents per 100 pounds.

Our original report indicated that complainant's testimony was confined to comparisons of the rates charged with rates on mining candles to the same destinations from Chicago, at which point complainant's competitor is located. We held that rates from these widely separated points were wholly unrelated. On rehearing complainant submitted practically the same comparisons. In addition comparisons were offered of the rates attacked as applied over the short lines from Helena to the destinations involved with the fifth-class rates from Helena to Los Angeles, Cal., and Denver, Colo., and the fifth-class rates between other points. Candles are rated

fifth class in the territory in question. For determining the reasonableness or unreasonableness of rates applied to given shipments, the earnings and distances over the routes actually traversed constitute a better measure than do computations based on short-line distances without regard for routes of movements.

Complainant's comparison of the rates assailed with the fifth-class rates for long hauls between various western points show the average ton-mile earnings under the average rate and distance, but these are not convincing. The averages include rates for routes over which the transportation conditions are not shown to be similar to the severe conditions of transportation through the mountainous and sparsely settled territory involved in this case. No other substantial or sufficient evidence is adduced.

We find that the rates charged are not shown to have been intrinsically unreasonable, and the complaint will be dismissed.

It appears that on one of the shipments to Naco, Ariz., charges were based on a rate of $1.98. It moved over the Northern Pacific Railway to Billings, Mont., Chicago, Burlington & Quincy Railroad to Denver, Colo., Atchison, Topeka & Santa Fe Railway to El Paso, Tex., and El Paso & Southwestern system to destination. The rate legally applicable was $1.84, based on the commodity rate of 76 cents to Denver and a commodity rate of $1.08 beyond. No freight bills are filed of record. Defendants should examine their records, and if it develops that an overcharge exists refund thereof should be made promptly.

An appropriate order will be entered.

No. 7940.

UNITED STATES CAST IRON PIPE & FOUNDRY COMPANY

v.

SOUTHERN RAILWAY COMPANY ET AL.

Submitted September 16, 1916. Decided May 12, 1917.

Denial of reparation on account of rates found unduly prejudicial reversed on rehearing and reparation awarded on proof of damage to complainant.

Wilmer M. Wood and *Winston, Payne, Strawn & Shaw* for complainant.

No appearance for defendants.

REPORT OF THE COMMISSION ON REHEARING.

BY THE COMMISSION:

This case was decided originally November 23, 1915, 37 I. C. C., 75. We found in substance that the maintenance by defendants between August 1, 1911, and December 10, 1911, inclusive, of a rate of 75 cents per 100 pounds on cast-iron pipe and fittings, in carloads, from Anniston and Bessemer, Ala., to El Segundo, Cal., while at the same time maintaining rates of 65 cents on the same articles to El Segundo from the Philadelphia and Pittsburgh, Pa., districts, and the Buffalo, N. Y., Cleveland and Cincinnati, Ohio, and Lynchburg, Va., districts, was unduly prejudicial to complainant. Reparation was asked on 37 carloads of cast-iron pipe and fittings shipped by complainant over defendants' lines from Anniston and Bessemer to El Segundo during the period mentioned, but was denied because it was not shown that the unlawful prejudice resulted in damage to complainant. Upon complainant's petition the case was reopened solely on the question of reparation.

The Pacific coast territory is a common market for eastern pipe manufacturers, and competition is keen. Their products are invariably sold on a delivered basis. For a number of years prior to July 31, 1911, rates from all producing districts east of the Mississippi River were on a parity. On that date the 75-cent rates from all such districts, except Anniston and Bessemer, to El Segundo were reduced to 65 cents. The 75-cent rate from Anniston and Bessemer remained in effect until December 11, 1911, when it was also reduced to 65 cents.

Complainant filed an exhibit showing that during the period the shipments moved it had bid in competition with other eastern manu-

facturers for contracts to supply cast-iron pipe and fittings in California. It appears from this exhibit that the differences between the prices quoted by the various bidders, exclusive of freight charges, were comparatively slight.

Complainant testified that when it bid for the contract covering these shipments it understood that the 65-cent rate was in effect from Anniston and Bessemer; that the bid was submitted in competition with bids of plants situated in other eastern districts from which complainant knew the rates were 65 cents; that it made its price accordingly, which price was but slightly less than those of its competitors; and that as a result of being compelled to pay charges at a rate of 75 cents instead of 65 cents the proceeds of this contract did not equal the actual cost of manufacturing the material.

Complainant has shown with reasonable certainty that it was compelled to forego its profit solely because the freight rate from Anniston and Bessemer to El Segundo exceeded the rate contemporaneously available to its competitors on like traffic, and that it has suffered a pecuniary loss as a result of the additional transportation charges paid. Defendants expressed willingness on our special docket to make reparation on these shipments.

We find that complainant made the shipments as described and paid and bore the charges thereon at the rate of 75 cents per 100 pounds, which was found in our original report herein to have been unduly prejudicial; that it has been damaged to the extent that the charges collected exceeded the charges that would have accrued at the rate of 65 cents per 100 pounds; and that it is entitled to reparation, with interest. The amount of reparation due can not be determined on this record, and complainant should prepare a statement showing the details of the shipments in accordance with rule V of the Rules of Practice, which statement should be submitted to defendants for verification. Upon receipt of a statement so prepared and verified we will consider the entry of an order awarding reparation.

As the rates on cast-iron pipe and fittings in carloads to El Segundo from Anniston and Bessemer and from the other eastern producing districts referred to were maintained on a parity for over three years subsequently to December 11, 1911, no order for the future is necessary.

No. 8404.[1]

LINDSAY COMMISSION COMPANY

v.

NORTHERN PACIFIC RAILWAY COMPANY.

Submitted August 21, 1916. Decided May 12, 1917.

Rates on dried beans in carloads from Kendrick and Troy, Idaho, to Missoula, Butte, and Helena, Mont., found to have been and to be unreasonable. Reparation awarded.

O. W. Tong for complainants.

D. F. Lyons for defendant.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainants are corporations engaged in the commission and wholesale grocery business at Missoula, Butte, and Helena, Mont. By complaints, filed August 25, 1915, as amended, and April 3, 1916, they allege, in No. 8404, that the rate of 60 cents per 100 pounds, minimum 30,000 pounds, charged for the transportation of six carloads of dried beans from Kendrick and Troy, Idaho, to Missoula, during the period from November, 1911, to January, 1915, was illegal and unreasonable; and in Sub-No. 1, that the rate of 65 cents per 100 pounds, minimum 30,000 pounds, charged for the transportation of various carloads of the same commodity from the same points of origin to Butte and Helena, during the period of two years preceding the filing of the complaint, was unreasonable. Reparation is asked and the establishment of reasonable rates for the future. Rates are stated in cents per 100 pounds.

The shipments moved over defendant's line, and charges were assessed thereon on basis of the rates as alleged. Complainants contend (1) that the rates as assessed prior to June 25, 1915, were illegal to the extent that they exceeded rates of 49 cents to Missoula and 55 cents to Butte and Helena, minimum 20,000 pounds; and (2) that they were and are unreasonable to the extent that they exceeded and exceed 30 cents to the former and 37 cents to the latter, minimum 30,000 pounds.

[1] The proceeding also embraces complaint in No. 8404 (Sub-No. 1), Union Mercantile Company et al. v. Northern Pacific Railway Company.

The rates charged were established October 18, 1911, and published in defendant's class and commodity tariff I. C. C. 5222, effective February 10, 1913, and prior issues, on "beans, carloads, minimum weight 30,000 pounds." These rates are still in effect. The rates which complainants contend should have been applied were published in defendant's "fresh fruit and vegetables" tariff I. C. C. No. 5084, effective September 9, 1912, on "vegetables as described in western classification (except straight carloads of vegetables taking class C)." The same provision was carried forward in defendant's I. C. C. No. 5300, which canceled its I. C. C. No. 5084. Dried beans, in carloads, are listed under the heading of "vegetables" in the western classification and are rated fifth class, minimum 36,000 pounds. The issues preceding I. C. C. No. 5084 restricted the rates therein to fresh vegetables. Effective June 25, 1915, I. C. C. No. 5300 was canceled by I. C. C. 5790, rule 130 of which reads as follows:

> The descriptions of fruit and vegetables used in this tariff are intended to mean fruit and vegetables in their natural state (not preserved, canned, dried, or evaporated);

and the title in question was changed to read "fruit and vegetables, fresh." Defendant insists that I. C. C. Nos. 5084 and 5300 did not cover dried beans, and that the specific rates contained in I. C. C. No. 5222 were the lawful rates.

We do not think the defendant's I. C. C. No. 5084 and I. C. C. No. 5300 were limited to fresh vegetables or otherwise to the exclusion of dried beans. It appears, therefore, that two conflicting sets of commodity rates were contemporaneously in effect. The rates of 60 cents to Missoula and 65 cents to Butte and Helena were in effect prior to the issue of I. C. C. No. 5084, and, not having been canceled thereby or by I. C. C. No. 5300, remained the applicable rates. There could, of course, be no doubt of the inapplicability of the lower rates subsequent to the publication of rule 130.

Troy and Kendrick are located on a branch line of the defendant extending southeast from Spokane, Wash., from which point they are distant 108 miles and 120 miles, respectively. Missoula, Butte, and Helena are on defendant's main line extending east from Tacoma, Wash., to St. Paul, Minn., through Spokane, and are distant from the latter point 257 miles, 376 miles, and 376 miles, respectively.

The following table compares the rates attacked with some of the rates cited by complainant, applicable on the same commodity, together with the ton-mile earnings thereunder:

From—	To—	Distance.	Rates.	Earnings per ton-mile.
		Miles.	*Cents.*	*Mills.*
Troy and Kendrick	Missoula	[1] 371	60	32.34
Do.	Butte and Helena	[1] 490	65	26.53
Denver, Colo.	Hastings, Nebr.	386	27½	14.25
Do.	Memphis, Nebr.	513	32½	12.67
Greeley Colo.	Omaha, Nebr.	529	35	13.33
Seattle, Wash.	Missoula, Mont.	653	63	19.30
Walla Walla, Wash.	Sand Point, Idaho	278	39	28.06

[1] Average distance.

Complainants observe that dried beans, in carloads, from Denver and other Colorado points to points in Wyoming, Nebraska, and other states are accorded the same rates as apply on potatoes and other classes of vegetables. Stress is placed upon the fact that defendant is a party to a joint rate of 52 cents from Denver to Helena and Butte, 944 miles, which rate yields 11.02 mills per ton-mile. Other comparisons, unfavorable to the rates assailed, were submitted.

Defendant testifies that its line from Kendrick and Troy to the destinations involved runs through a mountainous and sparsely settled country; that the rates attacked were established in 1911 for the special movement of dried beans from Troy and Kendrick to Helena; and that the previous rate was 75 cents, which defendant considered not unreasonably high. It is submitted that the rates assailed compare favorably with the rates on dried beans in that territory, of which the following are representative:

From—	To—	Distance.	Rate.	Earnings per ton-mile.
		Miles.	*Cents.*	*Mills.*
Twin Falls, Idaho	Granger, Wyo.	331	60	36.25
St. Anthony, Idaho	Rawlings, Wyo.	466	60	25.75
Do.	Howell, Wyo.	575	60	20.87
Do.	Gateway, Utah	234	60	51.28
Rogerson, Idaho	Provo, Utah	365	55	30.14
Troy and Kendrick	Missoula	[1] 371	60	32.34
Do.	Butte and Helena	[1] 490	65	20.53

[1] Average distance.

The shipments to Missoula listed in the amended complaint averaged 33,723 pounds. Using this weight and the average distance from Troy and Kendrick, the car-mile earnings averaged 54.54 cents. On the basis of the minimum weight of 30,000 pounds the earnings at the rates charged to all three destinations were unreasonably high. Based on this minimum and the average distance of 371 miles, the 49-cent rate on vegetables to that point would yield car-mile earnings of 39.62 cents; at the 55-cent rate on vegetables to Butte and Helena, for the average distance of 490 miles, 33.69 cents.

The measure of the rates of 30 and 37 cents asked by complainants is not clear. However, while not holding that dried beans, which do not require the refrigerator car service generally essential in the movement of fresh vegetables, should take rates equal to those accorded such perishable commodities, upon the facts of record we are of opinion and find that the rates charged were, are, and for the future will be, unreasonable to the extent that they exceeded and may exceed 49 cents per 100 pounds to Missoula and 55 cents per 100 pounds to Butte and Helena, minimum 30,000 pounds, which rates we find reasonable.

We further find that complainants made the shipments as described and paid and bore the charges thereon at the rates herein found to have been and to be unreasonable; that they have been damaged to the extent that the charges collected exceeded the charges that would have accrued on the basis herein found to have been and to be reasonable; and that they are entitled to reparation, with interest, on all shipments not barred by the statute of limitations. The amount of reparation due can not be determined on the present record, and complainants should prepare statements showing the details of their shipments in accordance with rule V of the Rules of Practice, which statements should be submitted to defendant for verification. Upon receipt of statements so prepared and verified, we shall consider the entry of an order awarding reparation.

An appropriate order will be entered.

No. 8442.

HALEY-NEELEY COMPANY

v.

CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY ET AL.

Submitted March 16, 1916. Decided May 12, 1917.

Charges on a carload of apples from Ogden, Utah, to Sioux City, Iowa, stored in transit at South Omaha, Nebr., not found to have been illegal, unreasonable, or unjustly discriminatory. Complaint dismissed.

C. E. Childe for complainant.

F. Montmorency for Chicago, Burlington & Quincy Railroad Company.

C. W. Axtell for Union Pacific Railroad Company.

Report of the Commission.

By the Commission:

Complainant, a corporation engaged in the fruit and produce business at Sioux City, Iowa, is the successor in interest to Haley & Lang Company, a corporation formerly engaged in the same business. By complaint, filed November 8, 1915, it alleges that the charges collected by defendants on a carload of apples shipped from Ogden, Utah, to Sioux City, in 1913, were illegal, unreasonable, and unjustly discriminatory. Reparation is asked. The claim was presented to the Commission informally April 12, 1915. Rates are stated in cents per 100 pounds.

The shipment, consisting of 630 boxes of apples, was delivered to the Union Pacific Railroad at Ogden, October 13, 1913, consigned to Chicago, Ill. While en route it was reconsigned to St. Louis, Mo., and later to South Omaha, Nebr. Upon arrival at South Omaha October 20, 1913, the apples were placed in storage and, subsequently, on October 31, 1913, they were reshipped under new bills of lading to Sioux City, to which point they were moved by the Chicago, Burlington & Quincy Railroad. Total charges were collected in the sum of \$270.83: \$240.53 on 32,070 pounds from Ogden to South Omaha; \$30.30 on 31,266 pounds from South Omaha to Sioux City; based on a commodity rate of 75 cents from Ogden to South Omaha, and the fifth-class rate of 9.69 cents beyond. A joint through commodity rate of 75 cents was contemporaneously applicable over the route of

movement, and defendants' transit tariffs provided for storage in transit at South Omaha, with certain restrictions.

The Chicago, Burlington & Quincy's transit tariff provided that "Receipted freight bills for in-shipments must be surrendered at the time of reshipment." The freight bill covering the movement to South Omaha was paid October 31, at South Omaha, by Armour & Company, but was not surrendered to either the Chicago, Burlington & Quincy or the Union Pacific at the time the shipment was ordered from South Omaha.

Complainant's witness testified that the freight bill covering the movement to South Omaha was surrendered to the Chicago, Burlington & Quincy at Sioux City at the time the shipment was ordered from South Omaha to Sioux City, and contends that this was an adequate and sufficient compliance with the rule. The freight bill covering the movement to South Omaha, however, bears stamps of Armour & Company and the Union Pacific which indicate that it was in South Omaha October 31, 1913, the date the shipment was taken out of storage.

While the rule in question did not specify at what point the inbound expense bill must be surrendered, a reasonable interpretation of the rule requires that the surrender be made at the transit point and at the time the shipment is offered for outbound movement. Any other interpretation would not only be opposed to the ordinary practice but would also leave the door wide open for substitution and other irregularities.

We find that the charges collected were legally applicable and that they are not shown to have been unreasonable or unjustly discriminatory. An order dismissing the complaint will be entered.

CASES DISPOSED OF BY THE COMMISSION WITHOUT PRINTED REPORT DURING THE TIME COVERED BY THIS VOLUME.

6962. LEEDS CO. *v.* AMERICAN TELEPHONE & TELEGRAPH CO. Commission requested to require the defendant to furnish its long-distance interstate service to guests at the Chalfonte, Atlantic City, N. J., by means of physical connection with the private telephone system installed in the Chalfonte by complainant. *H. W. Leets* for complainant. *N. C. Kingsbury* for defendant. Dismissed for want of prosecution, May 12, 1917.

7725. NATIONAL COMMERCIAL FIXTURE MFRS. ASSO. *v.* A. & V. RY. CO. ET AL. Southern classification ratings on store fixtures or furniture. *E. L. Ewing* for complainant. *J. L. Edwards*, *A. P. Humburg*, *R. V. Fletcher*, and *R. W. Moore* for defendants. Complaint satisfied. Dismissed April 25, 1917.

8566. ISBELL CO. *v.* C. N. R. R. CO. ET AL. Switching charges on beans at Jackson, Mich. *J. C. Graham* for complainant. *W. K. Williams*, *D. P. Connell*, and *R. K. Dykema* for defendants. Reopened proceedings dismissed on request of complainant, May 1, 1917.

9335. FREIGHT BUREAU OF THE MERCHANTS & MFRS. ASSO. OF BIRMINGHAM *v.* L. & N. R. R. CO. ET AL. Rates on sugar from New Orleans and points taking same rates to Birmingham, Ala. *H. E. Jordan* for complainant. *W. A. Northcutt* and *E. H. Hart* for defendants. Dismissed on request of complainant, May 12, 1917.

9481 and sub-Nos. 1 to 7, inclusive, by various other parties complainant. MILLER & CO. ET AL. *v.* M. & N. E. R. R. CO. ET AL. Minimum weight on potatoes from points in the lower peninsula of Michigan. *J. E. Robinson* for complainants. *D. Riely*, *J. C. Bills*, and *J. H. Campbell* for defendants. Dismissed on request of complainants, May 12, 1917.

9588. BOARD OF TRADE OF THE CITY OF CHICAGO *v.* A., T. & S. F. RY. CO. ET AL. Furnishing cars for the transportation of grain fron Chicago to points in central freight association and eastern trunk line territories and to Atlantic coast ports. *Jeffery & Campbell* for complainant. *A. H. Lossow*, *Knapp & Campbell*, *C. G. Austin, jr.*, *Winston, Payne, Strawn & Shaw*, *J. E. Roberts*, *S. S. Perry*, *R. V. Fletcher*, *E. S. Ballard*, *W. J. Turner*, *W. L. Kinter*, *M. B. & H. H. Johnson*, *H. D. Palmer*, *C. L. Andrus*, *Glennon, Cary, Walker & Howe*, *C. D. Clark*, *J. Stillwell*, *O. W. Dynes*, *F. M. Miner*, *E. D. Hotchkiss*, *G. S. Hobbs*, *W. A. Parker*, *T. H. Burgess*, *M. B. Pierce*, *S. C. Pratt*, *R. Dunlap*, *T. J. Norton*, *W. J. Larrabee*, *C. B. Cardy*, *N. S. Brown*, *D. G. Gray*, *K. F. Burgess*, *W. H. Biggar*, *R. W. Moore*, *W. K. Williams*, and *R. H. Widdicombe* for defendants. Dismissed on request of complainant, May 12, 1917.

TABLE OF CASES DISPOSED OF WITHOUT PRINTED REPORT.

REPARATION GRANTED UNDER SUPPLEMENTAL ORDERS OF THE COMMISSION DURING THE TIME COVERED BY THIS VOLUME.

No reparation was granted under supplemental orders of the Commission during the time covered by this volume.

TABLE OF COMMODITIES.

[The number in parentheses following citation indicates where commodity is considered.]

TABLE OF LOCALITIES.

[The number in parentheses following citation indicates where locality is considered.]

INDEX DIGEST.

[The number in parentheses following citation indicates where paragraph occurs or subject is considered.]

INSURANCE.

Insurance rates on Alaska trade range from 10 to 16 per cent of the value of the vessels and are three or four times higher than are paid by steamers operating on the California route or along the Atlantic coast. The Alaska Investigation, 680 (692).

INTERCHANGE OF TRAFFIC.

Carriers can not so adjust their relations with connections as to unduly prefer shippers via one connection over those shipping via another. Akron, Canton & Youngstown Ry. Co. *v.* B. & O. R. R. Co. 305 (307).

INTERCHANGE SWITCHING.

Finding of undue prejudice in switching services performed by the Buffalo Union Terminal R. R. affirmed and repararion awarded upon basis of cost of the interchange switching service performed by the Buffalo Union Terminal R. R. Buffalo Union Furnace Co. *v.* L. S. & M. S. Ry. Co. 267 (268, 274).

INTERCORPORATE RELATIONSHIPS.

Commission unable to take complainant's view that the belt line is a distinct corporate entity and that "the absorption of its switching charges by defendants operating at Norfolk stands upon the same footing legally as though it were owned and operated independently of the defendants." Richmond Chamber of Commerce *v.* S. A. L. Ry. 455 (459).

Allegation that the Copper River & Northwestern Ry. and the Alaska S. S. Co., prevent development of independent copper mines by imposing extortionate rates on copper ore and by transporting shipments of the controlling company for practically the cost of the service, not sustained. One who ships a particular commodity over lines of a proprietary common carrier does not necessarily procure transportation for the exact cost of service. The Alaskan Investigation, 680 (704).

Contention that transportation of copper ore by the Copper River & Northwestern Ry. for the Kennecott Copper Corp., sole owners of the railroad company, violates section 1, not sustained. It does not appear that the act prohibits the mere ownership of a mining company of the stocks or other securities of a railroad over which its products are shipped. Id. (709).

INTERMEDIATE POINTS.

Relief with respect to departures from the long-and-short-haul clause at intermediate points on indirect routes ordered and rates prescribed will eliminate such departures in the future. Chamber of Commerce, Houston, Tex., *v.* A., T. & S. F. Ry. Co. 349 (352).

INTERMEDIATE RATES. *See* THROUGH AND LOCAL.

INVESTIGATION.

Pere Marquette Railroad and Cincinnati, Hamilton and Dayton Railway companies, pursuant to request of Committee on Interstate and Foreign Commerce of House of Representatives. Pere Marquette R. R. Co. and C., H. & D. Ry. Co. 1.

Method pursued in assembling facts. Id. (217).

Upon supplemental proceedings, the findings and conclusions announced in original report herein are confirmed and the tentative tariffs submitted by respondents as required are, with certain minor exceptions, approved. Iron Ore Rate Cases, 368.

Investigation of rates, practices, rules, and regulations of carriers serving Alaska, wholly by rail or partly by rail and partly by water between points in Alaska and between points in the United States and points in Alaska. The Alaska Investigation, 680.

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